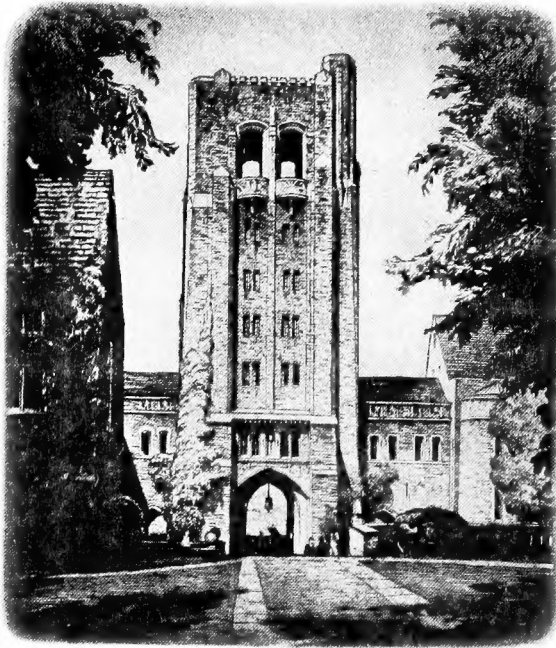


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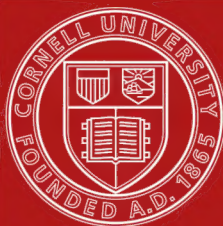
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SUPPLEMENT
TO
A TREATISE
ON THE
Interstate Commerce Act
AND
Digest of Decisions Construing
the Same

BY
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AUTHOR OF "THE USE OF THE TERM 'RES GESTAE' IN THE LAW OF EVIDENCE IN PENNSYLVANIA," LECTURER ON THE INTERSTATE COMMERCE ACT IN THE LAW DEPARTMENT OF THE UNIVERSITY OF PENNSYLVANIA.

VOLUME III

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PREFACE.

THE purpose of this supplement is to incorporate into the original treatise the provisions of the Mann-Elkins Act of June 18th, 1910, (36 Stat. 539) and also upwards of 700 decisions by the Courts and the Commission, published during the past two years.

The various changes in the act by the recent amendment are indicated in the notes to the Revised Text of the Act on pages 1-75, as well as all changes made by previous amendments.

The Supplement then follows the section headings of the original treatise, stating under each any changes in or additions to the law effected by the Amendment of 1910 or by recent decisions.

A Digest of the recent decisions follows, any proceeding growing out of a case previously digested being given under the case number applied to it in Volume II of the original treatise, so that a glance at pages 221-253 will determine whether or not any of the old cases have been taken to a higher tribunal or have been further investigated by the Commission.

Appendix A contains List of Citations by the Commission of its prior decisions, covering all cases to page 396 of Volume 19.

Appendix B contains a List of Commodities the rates on which have been investigated by the Commission or the Courts since in cases published after January, 1909.

The Table of Cases covers only the Supplement.

The Index at the end of the volume covers both the Original Treatise and the Supplement, roman figures referring to the former only, italics to the latter only, and black face figures to both.

The Supplement covers Volumes 15 to 18 and pages 1-302 of Volume 19 of the Commission's decisions, and all Federal decisions down to 218 U. S. p. 233 and to 180 Federal Reporter.

H. S. D., JR.

PHILADELPHIA, November 1st, 1910.

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THE INTERSTATE COMMERCE ACT.

AS AMENDED.

(Approved February 4, 1887, and in effect April 5, 1887 (24 Statutes at Large, 379; 1 Supp. to Rev. Stat. U. S. 529); amended by act approved March 2, 1889, (25 Statutes at Large, 855; 1 Supp. to Rev. Stat. U. S., 684), and by act approved February 10, 1891, (26 Statutes at Large, 743; 1 Supp. to Rev. Stat. U. S., 891), and by act approved February 8, 1895, (28 Statutes at Large, 643, 2 Supp. to Rev. Stat. U. S., 369), and by an act approved June 29, 1906, (34 Statutes at Large, 584), and by act approved April 13, 1908, (35 Statutes at Large, 60), and by an act approved June 18th, 1910, (36 Statutes at Large —)).

An act to regulate commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: Section 1. That the provisions of this act shall apply

Section 1.

Par. 1.

to any ¹ corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and ² to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the trans-

Parties and transportation subject to the Act.

(1) The words "any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to," were inserted by the amendment of 1906. Until the passage of this amendment, this portion of the paragraph read as follows: "That the provisions of this act shall apply to any common carrier or carriers engaged * * *."

(2) The clause "and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country," was inserted by the amendment of 1910.

Section 1.**Par. 1.**

Parties and transportation subject.

Not applicable to transportation wholly within one State.

portation of passengers or property wholly by railroad ³ (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States ⁴ or the District of Columbia ⁴ to any other State or Territory of the United States ⁴ or the District of Columbia, or ⁵ from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property ⁶ wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor ⁷ shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

(3) The parenthesis was inserted by the amendment of 1906. Prior to that amendment, this portion of the paragraph was punctuated as follows: " * * * wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State * * *."

(4) The comma at this point was expunged by the amendment of 1910.

(5) The phrase "or from one place in a Territory to another place in the same Territory," was inserted by the amendment of 1906.

(6) In the act of 1887, there was a comma after the word "property" and also one after the phrase "wholly within one State." This punctuation was omitted by the amendment of 1906.

(7) The remainder of this paragraph was inserted by the amendment of 1910.

The ⁸ term "common carrier" as used in this act shall include express companies and sleeping car companies. The term "railroad"⁹ as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and ¹⁰ shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and ¹¹ the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and ¹² to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange,

Section 1.**Par. 2.**

Express and sleeping car companies included.
Definition of the term "railroad."

What the term, "transportation" includes.

Duty to furnish transportation and through routes and rates.

(8) The first sentence of this paragraph was inserted by the amendment of 1906. The amendment of 1910 expunged commas before and after the phrase "as used in this act" in the first line of the paragraph.

(9) Commas were inserted before and after the phrase "as used in this act" by the amendment of 1906 but were expunged by the amendment of 1910.

(10) The clause "and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property;" was inserted by the amendment of 1906.

(11) The remainder of this paragraph under the act as it stood prior to the amendment of 1906 read as follows: "and the term 'transportation' shall include all instruments of shipment or carriage." The remainder of this paragraph as given above was inserted by the amendment of 1906.

(12) The remainder of the paragraph was added by the amendment of 1910.

Section 1.**Par. 2.**

Rules for ex-
change of cars,
etc.

Par. 3.

Charges must be
just and reason-
able.

Par. 4.

Duty to establish
reasonable classifica-
tions, rules and
regulations.

and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

All¹³ charges made for any service rendered or to be rendered in the transportation of passengers or property and¹⁴ for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*,¹⁵ That messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of services.

And¹⁶ it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking,

(13) Prior to the amendment of 1906, this paragraph read as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

The amendment of 1906 expunged the phrase "or for the receiving, delivering, storage, or handling of such property," and inserted the words "or any part thereof" after the word "service."

(14) The words "and for the transmission of messages by telegraph, telephone, or cable," were inserted by the amendment of 1910.

(15) The remainder of this paragraph was inserted by the amendment of 1910.

(16) This entire paragraph was inserted by the amendment of 1910.

packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.

Section 1.**Par. 4.**

Duty to make reasonable rules, and regulations, etc.

No ¹⁷ common carrier subject to the provisions of this act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; ¹⁸ to necessary caretakers of live stock, poultry, milk, ¹⁹ and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs in-

Par. 5.

Free passes and transportation prohibited.

Exceptions.

(17) This entire paragraph was inserted by the amendment of 1906, and later altered, as indicated below, by the amendments of 1908 and 1910.

(18) The amendment of 1910 struck out the words "and boards of managers of such Homes" at this point.

(19) The word "milk" was inserted by the amendment of 1910.

Section 1.**Par. 5.**

Exceptions to free pass provisions.

Interchange of passes.

Free carriage in time of epidemic, etc.

Telegraph franks.

Definition of the term "employees."

Definition of the term "families."

Penalty for violation of the provision.

spectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further*,²⁰ That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this act: *Provided* ²¹ *further*, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed,²² and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor,²³ and for each offense, on conviction, shall pay to the United States a

(20) This proviso was inserted by the amendment of 1910.

(21) This further proviso was inserted by the amendment of April 13, 1908. This amendment also inserted the comma after the word "destitute" in the 11th line of the paragraph and also after the words "customs inspectors" (four lines above the first proviso), and expunged a comma after the word "transportation" in the next to last sentence in the paragraph.

(22) The amendment of 1910 inserted the words ", and the widows during widowhood and minor children during minority of persons who died,".

(23) The amendment of 1910 inserted the comma at this point.

penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

Section 1.**Par. 5.**

Penalties.

Jurisdiction.

From ²⁴ and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own, in whole ²⁵ or in part, or in which it may have any interest,²³ direct or indirect,²³ except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Par. 6.

Commodities clause.

Any ²⁶ common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall

Par. 7.

Duty to construct, maintain and operate switch connections.

(24) This entire paragraph was inserted by the amendment of 1906.

(25) The amendment of 1910 struck out a comma at this point.

(26) This entire paragraph was inserted by the amendment of 1906 and altered by that of 1910 as indicated below.

Section 1.**Par. 7.**

Procedure before
the Commission
to secure switch
connections.

fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or ²⁷ owner of such lateral, branch line of railroad, such shipper or ²⁷ owner of such lateral, branch line of railroad may make complaint to the commission, as provided in section thirteen of this act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order,²⁸ as provided in section fifteen of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money.

Section 2.

Unjust discrimination in transportation charges forbidden.

Section 2. That ²⁹ if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3.**Par. 1.**

Undue preference of persons or localities forbidden.

Section 3. That ³⁰ it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person,

(27) The words "or owner of such lateral, branch line of railroad" were inserted by the amendment of 1910.

(28) The comma at this point was inserted by the amendment of 1910.

(29) Section 2 remains as adopted in 1887.

(30) Section 3 remains as adopted in 1887.

company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 3.

Par. 1.

Undue preference.

Par. 2.

Facilities for the interchange of traffic.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Discriminations in charges between connecting lines forbidden.

Proviso.

Section 4. That ³¹ it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Inter-

Section 4.

Par. 1.

Long and short haul clause.

Through rate greater than sum of locals prohibited.

(31) Section 4 as originally adopted and as it remained until altered to its present form by the amendment of 1910, was as follows:

"Section 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Section 4.**Par. 1.**

Commission authorized to relieve carriers from this provision.

Amendment does not apply to existing rates.

state Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided, further,* That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

Par. 2.

Increase of competitive rates forbidden on removal of water competition.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Section 5.

Pooling of freights and division of earnings forbidden.

Section 5. That ³² it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Section 6.**Par. 1.**

Filing, printing and posting of schedules of rates.

Section 6. That ³³ every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its

(32) Section 5 remains as adopted in 1887.

(33) This paragraph as originally enacted read as follows:

"Sec. 6. That every common carrier subject to the provisions of this act, shall

own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classifi-

Section 6.**Par. 1.**

Filing and publication of tariffs.

Contents of tariffs.

print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of the ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected."

It was amended by the act of 1889 to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected."

The amendment of 1906 reduced the paragraph to its present form.

It will be noticed that the act of 1887 provided merely that the schedules should "be kept in every depot * * *." The act of 1889 changed this requirement making it necessary that they "shall be posted in two public and conspicuous places in every depot, etc." The act of 1906 required that they "shall be kept posted in two public and conspicuous places, etc."

Section 6.**Par. 1.**

Contents and
form of tariffs.

Posting schedules.

Par. 2.

Schedule of rates
through a foreign
country.

Effect of failure
to post rates
through foreign
countries.

cation of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this act.

Any ³⁴ common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print ³⁵ and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States ³⁶ the through rate on which shall not have been made public, ³⁷ as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production. ³⁸

(34) This paragraph is substantially as enacted in 1887.

(35) In the original act, the following phrase read as follows: "Print and keep for public inspection, at every depot where such freight is received, etc." It was reduced to its present form by the amendment of 1889.

(36) The original act contained a comma at this point, which was expunged by the amendment of 1906.

(37) The comma at this point was inserted by amendment of 1906.

(38) The act of 1906 expunged the following clause from the end of the paragraph: "and any law in conflict with this section is hereby repealed."

No ³⁹ change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

Section 6.**Par. 3.**

Thirty days' notice of change in rates required.

Commission may modify requirements as to publishing, posting and filing tariffs.

(39) This paragraph was altered both by the amendment of 1889, and by that of 1906. The original provision was as follows:

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection."

It was amended in 1889 to read as follows:

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given."

Section 6.**Par. 4.**

Parties to joint
tariffs to be speci-
fied.

The ⁴⁰ names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same,

(40) The next five paragraphs were materially altered both by the amendment of 1889 and by that of 1906. The provisions as they stood after the amendment of 1889 are given below, the italicized passages having been introduced by that amendment. The amendment of 1889 also expunged the passage in the second paragraph below, enclosed in parenthesis. In the line of the second paragraph, above the beginning of the parenthesis, the word "carriers" was altered by the act of 1889 to "carrier." In the last paragraph, also, the amendment of 1889 inserted a comma after the word "situated" in the 6th line of the paragraph, and expunged one after the word "corporation," in the 7th line:—

"And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

"Every common carrier subject to the provisions of this act shall file with the commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said commission of all changes made in the same. Every such common carrier shall also file with said commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said commission, in so far as may, in the judgment of the commission, be deemed practicable; and said commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem practicable for such common carriers to publish, and the places in which they shall be published (; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published).

"No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, or charges, except after three days' notice, to be given to the commission as is above provided in the case of an advance of joint rates.

shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Section 6.**Par. 4.**

Concurrence in joint tariffs.

Every common carrier subject to this act shall also file with said commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party.

Par. 5.

Copies of contracts, etc., with other carriers as to traffic affected by the Act must be filed with the Commission.

The commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare or charge is named thereon than is specified in the schedule filed with the commission in force at the time.

"The commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act."

Section 6.**Par. 6.**

Commission may prescribe form of posting tariffs.

The commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

Par. 7.

Transportation prohibited, except at rates duly filed.

No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: *Provided*, That wherever the word "carrier" occurs in this act it shall be held to mean "common carrier."

Departure from tariff rates prohibited.

"Carrier" means "common carrier."

Par. 8.

Preference of troops, etc., in time of war required.

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

Par 9.

Rejection of tariffs by the commission.

The ⁴¹ commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the commission shall be void and its use shall be unlawful.

Par. 10.

Penalty for non-compliance with regulations of the commission.

In ⁴¹ case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a pen-

(41) The last four paragraphs of section 6 were added by the amendment of 1910.

alty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

Section 6.**Par. 10.**

Penalty.

If ⁴¹ any common carrier subject to the provisions of this act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

Par. 11.

Duty of carrier to furnish written statement of rate on request.

It ⁴¹ shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: "The Station Agent of the _____ Company at _____ Station," together with the name of the proper post office, inserting the name of the carrier company and of the station in the blanks, and to serve

Par. 12.

Duty of carrier to keep posted name of agent to whom application for rate may be made.

(41) The last four paragraphs of section 6 were added by the amendment of 1910.

the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.

Section 7.

Interruption of continuous carriage, to evade the act unlawful, and declared ineffective.

Section 7. That ⁴² it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

Section 8.

Liability for damages for violation of the act.

Section 8. That ⁴³ in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Section 9.

Persons damaged may elect to complain to the Commission or to bring suit in Federal Court.

Section 9. That ⁴⁴ any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person

(42) This section remains as enacted in 1887.

(43) This section remains as enacted in 1887.

(44) This section remains as enacted in 1887.

or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Section 9.

Actions for damages.

Officers, etc., of defendant carrier may be compelled to testify in such actions.

Section 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person⁴⁵ acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act for⁴⁶ which no penalty is otherwise provided, or who⁴⁷ shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of

Section 10.**Par. 1.**

Penalties for violating the act.

(45) The amendment of 1889 inserted a comma at this point but the amendment of 1910 expunged it.

(46) The amendment of 1910 inserted the words "for which no penalty is otherwise provided."

(47) The word "who" was inserted by the amendment of 1910.

Section 10.**Par. 1.**

Discrimination
punishable by
imprisonment.

not to exceed five thousand dollars for each offense: *Provided*,⁴⁸ That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges⁴⁹ for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Par. 2.

Penalties for false
billing, etc., by
carriers, their
officers or agents.

Any common carrier subject to the provisions of this act, or,⁵⁰ whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Par. 3.

Penalties for false
billing, etc., by
shippers and other
persons.

Any⁵¹ person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of

(48) The remainder of section 10 was originally inserted by the amendment of 1889, and was later modified, as indicated below, by the amendment of 1910.

The Elkins act, as passed in 1903, abolished imprisonment as part of the penalty for violating the act, wherever prescribed. The effect of this would be to nullify the proviso at the end of the paragraph one of section 10. The amendment of 1906, however, restored the provision for imprisonment.

(49) The amendment of 1910 expunged a comma at this point.

(50) The amendment of 1910 inserted the comma at this point.

(51) This paragraph was altered by the amendment of 1910 to its present form. It was introduced into the act by the amendment of 1889 and until 1910 read as follows:

"Any person and any officer or agent of any corporation or company who shall

this act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof

Section 10.**Par. 3.**

False billing by shippers and others forbidden and penalized.

deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

Section 10.**Par. 3.**

False billing by
shippers and
others penalized.

in any court of the United States of competent jurisdiction, within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

Par. 4.

Penalties for inducing carrier unjustly to discriminate.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or ⁵² attempt to induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person ⁵³ or such officer or agent of such corporation or company ⁵³ shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action ⁵⁴ to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Joint liability of
agents and carriers
in such cases.

Section 11.

Interstate Commerce Commission.
Appointment and terms of office.

Section 11. That ⁵⁵ a commission is hereby created and established to be known as the Inter-state Commerce Commission, which shall be composed of five commissioners, who shall be appointed by the President, by and with the

(52) The amendment of 1910 inserted the words "or attempt to induce."

(53) The amendment of 1910 expunged a comma at this point.

(54) The amendment of 1910 struck out the words "on the case" after "action."

(55) Section 11 remains as originally enacted. See also section 24 as added by the amendment of 1906.

advice and consent of the Senate. The commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the commissioner whom he shall succeed. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

Section 11.

Appointment and
terms of office of
the Commission.

Section 12. That the commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created; and ⁵⁶ the commission is hereby

Section 12.**Par. 1.**

Power of Com-
mission to inquire
into business of
carriers.

(56) The clause "and the commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the commission, it shall be the duty of any district attorney of the United States to whom the commission may apply to institute in the proper court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this act; and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States;" was added by the amendment of 1889. Commas before and after the phrase "under the direction of the Attorney-General of the United

Section 12.**Par. 1.**

Duty of district attorney to prosecute at Commission's instigation.

Expenses of prosecutions.

Power of Commission to compel attendance of witnesses.

Par. 2.

Commission may invoke aid of Federal Court to compel witnesses to attend and testify, etc.

Par. 3.

Power of court to require appearance before the commission.

authorized and required to execute and enforce the provisions of this act; and, upon the request of the commission, it shall be the duty of any district attorney of the United States to whom the commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the commission shall have power to require, by ⁵⁷ subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such ⁵⁸ attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And ⁵⁹ in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of

States" and after the word "act" in the phrase immediately following were expunged by the amendment of 1891. This amendment also changed the punctuation after the word "thereof" in the clause above quoted to a comma, reducing the paragraph to its present form.

(57) The words "by subpoena" were inserted by the amendment of 1889.

(58) This sentence was inserted by the amendment of 1891.

(59) As originally enacted, this provision read as follows: "* * * to any matter under investigation, and to that end may invoke * * *."

The act of 1889 substituted the words "and in case of disobedience to a subpoena, the commission, or any party to a proceeding before the commission," for the words "and to that end."

The amendment of 1891 altered the provision to its present form.

this act, or other person, issue an order requiring such common carrier or other person to appear before said commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The ⁶⁰ claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Section 12.**Par. 3.**

Power of court to compel testimony before the commission.

Incrimination will not excuse failure to testify.

The ⁶¹ testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Par. 4.

Depositions.

Notice.

(60) See also Immunity act, *infra*, p. 74.

(61) The remainder of this section was inserted by the amendment of 1891.

Section 12.**Par. 5.****Examination by deposition.**

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Par. 6.**Depositions in foreign countries.**

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the commission, or agreed upon by the parties by stipulation in writing to be filed with the commission. All depositions must be promptly filed with the commission.

Par. 7.**Fees to witnesses and magistrates.**

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Section 13.**Par. 1.****Complaints to the Commission. Who may make.**

Section 13. That any person, firm, corporation, company,⁶² or association, or any mercantile, agricultural, or manufacturing society⁶³ or other organization, or any body politic or municipal organization, or⁶⁴ any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act,⁶⁵ in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint⁶⁶ thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint,⁶⁵ or to answer the same in writing,⁶⁵ within a reasonable time, to be specified by the commission. If such common carrier⁶⁷ within the time specified⁶⁷ shall make reparation for the injury alleged to have been done,

Form.**Service.**

(62) The word "company," was inserted by the amendment of 1910.

(63) The words "or other organization" were inserted by the amendment of 1910.

(64) The words " , or any common carrier," were inserted by the amendment of 1910.

(65) The amendment of 1910 inserted the comma at this point.

(66) The amendment of 1910 substituted the word "complaint" for the word "charges" at this point.

(67) The amendment of 1910 expunged a comma at this point.

the ⁶⁸ common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or ⁶⁹ carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Section 13.**Par. 1.**

Complaints to the commission.

Said ⁷⁰ commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act, or relating to the enforcement of any of the provisions of this act. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Par. 2.

Investigations by the commission.

Direct damage to complainant not necessary.

(68) The amendment of 1910 substituted the words "the common" for the word "said" at this point.

(69) The amendment of 1910 inserted the words "or carriers."

(70) As originally enacted and until altered to its present form by the amendment of 1910, the remainder of this section was as follows:

"Said commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

"No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

Section 14.**Par. 1.**

Reports of the
Commission.

Section 14. That ⁷¹ whenever an investigation shall be made by said commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

Par. 2.

Reports to be
entered of record
and copies fur-
nished complain-
ant and carrier.

All ⁷² reports of investigations made by the commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Par. 3.

Publication of
reports.

The ⁷³ commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The commission may also cause to be printed for early distribution its annual reports.

Section 15.**Par. 1.**

Commission em-
powered to pre-
scribe maximum
rates and reason-
able regulations
affecting rates.

Section 15. That ⁷⁴ whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the commission shall be of

(71) This paragraph as originally enacted was as follows:

"Sec. 14. That whenever an investigation shall be made by said commission, it shall be its duty to make report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found."

It was altered to its present form by the amendment of 1906.

(72) This paragraph remains as originally enacted.

(73) This paragraph was added by the amendment of 1889. It was unaltered by the amendment of 1906 except for the fact that commas were expunged after the word "contained" in the 6th line of the paragraph, and after the word "States" in the 6th and 7th lines.

(74) Section 15 was altered to its present form by the amendment of 1910, hav-

opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this act, or that any individual

Section 15.**Par. 1.**

Power to prescribe maximum rates and reasonable regulations.

ing previously been amended in 1906 as indicated in the following notes. As originally enacted it read as follows:

Sec. 15. "That if in any case in which an investigation shall be made by said commission it shall be made to appear to the satisfaction of the commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the commission; and if, within the time specified, it shall be made to appear to the commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law."

By the amendment of 1906, the first sentence of Par. 1 of the section was amended to read as follows:

"Section 15. That the commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this act, for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed.

Section 15.**Par. 1.**

Power to pre-
scribe maximum
rates and reason-
able regulations.

Orders of the
Commission ef-
fective in not less
than 30 days un-
less suspended.

Commission em-
powered to deter-
mine divisions of
joint rates among
connecting lines.

Par. 2.

Commission
empowered to sus-
pend rates, sched-
ules, etc.

or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission,⁷⁵ or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the commission may,⁷⁵ after hearing,⁷⁵ make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Whenever ⁷⁶ there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or

(75) The comma at this point was inserted by the amendment of 1910.

(76) This paragraph was inserted by the amendment of 1910.

any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

The ⁷⁷ commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may es-

Section 15.**Par. 2.**

Power to suspend rates, schedules, etc.

Proviso.

Burden of justifying increased rate on carrier.

Par. 3.

Commission may establish through routes and joint rates.

Section 15.**Par. 3.**

Power to establish through routes and joint rates.

tablish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.

Par. 4.

Qualification of power.

And ⁷⁷ in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

Par. 5.

Shipper to have right to designate route.

In ⁷⁷ all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this act to any

(77) Paragraphs 3, 4 and 5 were substituted by the amendment of 1910 for a single paragraph, inserted by the amendment of 1906, and reading as follows:

"The commission may also, after hearing of a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line."

point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

It ⁷⁸ shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also

Section 15.**Par. 5.**

Shipper to have right to designate route.

Proviso.

Par. 6.

Unlawful for carriers to disclose information as to shipments.

(78) This paragraph was inserted by the amendment of 1910.

Section 15.**Par. 6.**

Unlawful for carriers to disclose information as to shipments.

be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided*, That nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Par. 7.

Violation of preceding paragraph a misdemeanor.

Any ⁷⁸ person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

Par. 8.

Commission empowered to determine maximum allowances to shippers for transportation services.

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or ⁷⁹ on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services ⁸⁰ so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.⁸¹

Par. 9.

Enumeration of powers above not exclusive.

The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this act.

(78) This paragraph was inserted by the amendment of 1910.

(79) The phrase "or on its own initiative" was inserted by the amendment of 1910.

(80) The amendment of 1910 altered the word "service" to "services."

(81) The word "under" was substituted by the amendment of 1910 for "in."

Section 16. That ⁸² if, after hearing on a complaint made as provided in section thirteen of this act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the commission shall make an

Section 16.**Par. 1.**

Award of damages
by the Commis-
sion.

(82) The amendments of 1906 and 1910 made radical changes in this section. Prior to 1906, the act had remained unaltered since the amendment of 1889. Under the latter amendment, section 16 provided as follows:

Sec. 16. "That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the commission *created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the commission* or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing *the findings of fact in the report of said commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hun-*

order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

Section 10.

Par. 2.

Method of bringing suit in Federal Court to collect damages awarded.

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United

dred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"If the matters involved in any such order or requirement of said commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial of the findings of fact of said commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the

States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or⁸³ in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in⁸⁴ the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a

Section 16.**Par. 2.**

Suits in court for damages.

Findings and order of Commissions prima facie evidence.

Attorney's fee.

issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session."

The passages in italics above were inserted by the amendment of 1889. The phrase "created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the commission or" was substituted by the amendment of 1889 for the phrase "in this act named, it shall be the duty of the commission, and lawful" in the original act of 1887. In the act of 1889 also altered the punctuation in this section in minor respects as follows: It expunged commas after the word "apply" in line 7, after the word "servants" in line 14, after the word "prosecute" in line 19, and after the word "complaining" in line 43, and inserted commas after the word "violate" in line 2, "injunction" in line 35, "money" in line 39, "day" in line 40, "order" in line 40, and "court" in line 43.

Section 16 was altered to its present form by the amendment of 1906, except in the particulars in the following notes.

(83) The phrase "or in any state court of general jurisdiction having jurisdiction of the parties," was inserted by the amendment of 1910.

(84) The phrase "in the circuit court of the United States" was inserted by the amendment of 1910.

Section 16.**Par. 2.**

Limitation of actions.

part of the costs of the suit. All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or ⁸⁵ state court within one year from the date of the order, and not after.⁸⁶

Par. 3.

Joint plaintiffs and defendants in damage cases.

In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs ⁸⁷ against the defendant found to be liable to such plaintiff.

Service of process.

Par. 4.

Service of order of commission.

Every ⁸⁸ order of the commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

Par. 5.

Commission may suspend or modify its orders.

The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(85) The words "or state court" were inserted by the amendment of 1910.

(86) The amendment of 1910 struck out the following proviso at the end of the paragraph, substituting, also, a period for a colon after the word "after":

"*Provided*, That claims accrued prior to the passage of this act may be presented within one year."

(87) The amendment of 1910 expunged a comma at this point.

(88) The amendment of 1910 substituted this paragraph in place of the following:

"Every order of the commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail."

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this act ⁸⁷ shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.⁸⁹

The ⁹⁰ commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission's own instance or upon complaint, or to appear for and represent the commission in any case pending in the commerce court; and the expenses of such employment shall be paid out of the appropriation for the commission.

Section 16.

Par. 6.

Duty of carriers to comply with orders.

Par. 7.

Forfeiture for knowing failure to comply with orders made under Section 15.

Par. 8.

Recovery of such forfeiture.

Par. 9.

Duty of attorney-general to prosecute for recovery of forfeitures. Costs and expenses.

Par. 10.

Commission may employ attorneys.

(89) The amendment of 1910 struck out the following sentence from the end of this paragraph, substituting therefor paragraph 10 as above:

"The commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this act, paying the expenses of such employment out of its own appropriation."

(90) This paragraph was inserted by the amendment of 1910 in place of the sentence struck out of the preceding paragraph, (see note 89).

Section 16.**Par. 11.**

Proceedings for enforcement of Commission's orders other than for the payment of money.

If ⁹¹ any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney-General, may apply to the commerce court for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

(91) This paragraph was substituted by the amendment of 1910 for the three following paragraphs which had been inserted by the amendment of 1906:

"If any carrier fails or neglects to obey any order of the commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

"From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

"The venue of suits brought in any of the circuit courts of the United States against the commission to enjoin, set aside, annul, or suspend any order or requirement of the commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier

The copies of schedules and ⁹² classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and ⁹⁶ arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or ⁹³ other reports of carriers made to the commission ⁹⁴ as required under ⁹⁵ the provisions of this act ⁹⁴ shall be preserved as public records in the custody of the secretary of the commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and ⁹⁶ extracts from any of said schedules, classifications,⁹⁷ tariffs, contracts, agreements, arrangements,

Section 16.**Par. 12.**

Tariffs and agreements of carriers to be preserved and admitted in evidence as public records.

has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of 'An act to expedite the hearing and determination of suits in equity, and so forth,' approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the commission, or any of the provisions of the act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided*, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the commission shall be granted except on hearing after not less than five days' notice to the commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

(92) The words "and classifications" were inserted by the amendment of 1910.

(93) The words "or other" were inserted by the amendment of 1910.

(94) The amendment of 1910 struck out a comma at this point.

(95) The amendment of 1910 substituted the word "under" for "by."

(96) The amendment of 1910 substituted the word "and" for "or."

(97) The amendment of 1910 inserted the word "classifications,".

Section 16.**Par. 12.**

or reports,⁹⁸ made public records as aforesaid, certified by the secretary,⁹⁸ under the ⁹⁹ commission's ⁹⁷ seal, shall be received in evidence with like effect as the originals.

Section 16a.

Rehearings by the
Commission.

Section 16a. That ¹⁰⁰ after a decision, order, or requirement has been made by the commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

Section 17.

Procedure before
the Commission.

Section 17. That ¹ the commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said commission may, from time

(98) The amendment of 1910 inserted the comma at this point.

(99) The amendment of 1910 substituted the words "the commission's" for "its."

(100) Section 16a was inserted by the amendment of 1906.

(1) Section 17 remains as passed in the original act except the last three words "and sign subpoenas" which were added by the amendment of 1889.

to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said commission and be heard, in person or by attorney. Every vote and official act of the commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said commission shall have an official seal, which shall be judicially noticed. Either of the members of the commission may administer oaths and affirmations and sign subpoenas.

Section 17.

Procedure before
the commission.

Section 18. That² each commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise

Section 18.**Par. 1.**

Salaries, etc., of
the Commission-
ers.

(2) Section 18 remains in the same form as after the amendment of 1889, the latter amendment having made certain changes therein. As passed in 1887, the section provided as follows:

Sec. 18. "That each commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

"The commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor approved by the chairman of the commission and the Secretary of the Interior."

See also Section 24 as introduced by the amendment of 1906.

Section 18.**Par. 1.**

Offices and witness fees.

provided by law, the commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Par. 2.

Expenses.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the commission.

Section 19.

Office and sessions of the Commission.

Section 19. That³ the principal office of the commission shall be in the city of Washington, where its general session shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the commission may hold special sessions in any part of the United States. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Section 20.**Par. 1.**

Commission authorized to require annual reports from carriers.

Section 20. That⁴ the commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, and from the owners of all railroads engaged in interstate commerce as defined in this act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts

Contents thereof.

(4) All of Section 20 except the first paragraph was added to the original act of 1887 by the amendment of 1906, the second paragraph, however, having been materially altered in 1910 as indicated below. The amendment of 1906 also altered the first paragraph of the section in certain respects as follows: Beginning at the third line of the paragraph, it substituted the words "and from the owners of all

and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements, the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Section 20.**Par. 1.**

Contents of reports.

Commission may require uniform accounts.

Said⁵ detailed reports shall contain all the required

Par. 2.

railroads engaged in interstate commerce as defined in this act to," for the words "to fix the time and". It inserted the phrase "the accidents to passengers, employees, and other persons, and the causes thereof;" it substituted the words "affecting the same," in the last sentence of the paragraph for the word "with other common carriers," expunged the word "said" before "commission" in the 7th line from the end of the paragraph and also a parenthesis after the word "prescribed" in the fourth line from the bottom of the paragraph, which in the original act read as follows: "(if in the opinion of the commission it is practicable to prescribe such uniformity and methods of keeping accounts)."

In the original act there was a hyphen between the words "balance-sheet" in the 11th line from the end of the paragraph and the word "in", in the 7th line from the end of the paragraph read "within."

(5) This paragraph was substituted by the amendment of 1910 for the following, which had been inserted in 1906:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the com-

Section 20.**Par. 2.**

Contents of reports.

statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.

mission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided."

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, and it may employ special agents or examiners, who shall have authority under the order of the commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of a failure or refusal on the part of any such carrier, receiver, or trustee, to keep such accounts, records, and memoranda on the books and in the manner prescribed by the commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall wilfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or

Section 20.**Par. 3.**

Recovery of forfeitures.

Par. 4.

Oath to annual reports.

Par. 5.

Commission may prescribe form of accounts.

Commission to have access to all records.

Par. 6.

Forfeiture for failure to keep accounts.

Par. 7.

Penalty for false accounts.

Section 20.**Par. 7**

False accounts.

memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

Par. 8.

Penalty for unauthorized divulgence of information by special examiner.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

Par. 9.

Circuit and district courts may issue mandamus to compel compliance with the Act.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of said act to regulate commerce or of any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them.

Par. 10.

Employment of special agents by the Commission.

And to carry out and give effect to the provisions of said acts, or any of them, the commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

Par. 11.

Initial carrier liable for damage to holder of bill lading in spite of contract to the contrary.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such

property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

Section 20.**Par. 11.**

Proviso.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

Par. 12.

Recourse by initial carrier to carrier responsible.

Section 21. That ⁶ the commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the commission may deem necessary; and the names and compensation of the persons employed by said commission.

Section 21.

Annual reports by the Commission to Congress.

Section 22. That ⁷ nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal

Section 22.

Persons and property which may be carried at reduced rates.

(6) Section 21 was reduced to its present form by the amendment of 1889. As originally enacted it read as follows:

Sec. 21. "That the commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the commission may deem necessary."

(7) Section 22 was altered both by the amendment of 1889 and by that of 1895. As amended in 1889, the provision read as follows:

"Sec. 22. That nothing in this act shall *prevent* the carriage, storage, or hand-

Section 22.

Passes and reduced rates.

Mileage excursion, and commutation passenger tickets.

Passes to railroad officers and employees.

governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by

ling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, *or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets;* nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, *or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes;* nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*. That no pending litigation shall in any way be affected by this act."

The word "prevent," printed in italics, was substituted by the amendment of 1889 for the words "apply to" in the original act. The other italicized passages were inserted by the amendment of 1889. The amendment of 1895 added to the section the provision following the words "*Provided further.*"

statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act: *Provided further*, That nothing in this act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, and charges filed with the commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

Section 22.

Joint interchangeable 5000 mile tickets.

Amount of free baggage.

Adherence to published rates required.

Penalty.

Section 23. That ⁸ the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all

Section 23.

Jurisdiction of courts to issue mandamus to compel the movement of interstate traffic or the allowance of facilities in discrimination cases.

(8) Section 23 and Section 24 of the original act were as follows:

Section 23.

Mandamus proceedings.

acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ; *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

Proviso.

Writ cumulative.

Section 24.

Number and salaries of Commissioners increased.

Section 24. That⁹ the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring

Sec. 23. "That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this act for the fiscal year ending June thirtieth, Anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto."

Sec. 24. "That the provisions of sections eleven and eighteen of this act, relating to the appointment and organization of the commission herein provided for, shall take effect immediately, and the remaining provisions of this act shall take effect sixty days after its passage."

The present section 23 was added by the amendment of 1889.

(9) Section 24 was added by the amendment of 1906.

December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Not more than four commissioners shall be appointed from the same political party.

Section 24.

Terms of commissioners.

That ¹⁰ all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the act to regulate commerce and all acts amendatory thereof shall apply to any and all proceedings and hearings under this act.

Section 9. (Hepburn Act.)

Witnesses and testimony.

That all laws and parts of laws in conflict with the provisions of this act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Section 10. (Hepburn Act.)

Conflicting laws repealed.

Proviso.

That this act shall take effect and be in force from and after its passage.¹¹

Section 11. (Hepburn Act.)

When act effective.

Section 1. That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

Mann-Elkins Act of 1910.**Section 1.****Par. 1.**

Commerce court created.

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or

Jurisdiction.

(10) In the three following sections, the words "this act" refer only to the Hepburn act.

(11) The Joint Resolution of June 30, 1906, provided as follows:

"That the act entitled 'An act to amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' shall take effect and be in force sixty days after its approval by the President of the United States."

Mann-Elkins Act.**Section 1.****Par. 1.**

Jurisdiction of commerce court.

by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Par. 2.

Federal jurisdiction not hereby enlarged.

Nothing contained in this act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the commerce court.

Par. 3.

Jurisdiction of commerce court exclusive.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

Par. 4.

Organization of commerce court.

The commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges to be appointed as hereinafter provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or

termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge.

Mann-Elkins Act.

Section 1.

Par. 4.

Organization of the commerce court.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum.

Par. 5.

Additional salary of judges.

The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court for any district, or the circuit court of appeals for any circuit, or in the commerce court.

Par. 6.

Appointment of judges.

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

Par. 7.

Presiding judge.

Quorum.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and

Par. 8.

Subordinate officers of the court.

**Mann-Elkins
Act.****Section 1.****Par. 8.**Subordinate court
officers.

deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

Par. 9.Session of the
court.

The commerce court shall always be open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

Expenses.

Par. 10.

Court room.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms can not be provided in such

public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

Mann-Elkins Act.

Section 1.

If, at any time, the business of the commerce court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any circuit court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

Par. 11.

Substitution of judges.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court, and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

Par. 12.

Powers of the court.

**Mann-Elkins
Act.****Section 1.****Par. 13.**Practice before
the court.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

Par. 14.

Date of opening.

The commerce court shall be opened for the transaction of business at a date to be fixed by order of the said court, which shall be not later than thirty days after the judges thereof shall have been designated.

Section 2.**Par. 1.**Appeal to Su-
preme Court.

Section 2. That a final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken

by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Mann-Elkins Act.

Section 2.

Par. 1.

Appeals.

Par. 2.

When a supercedes.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the commerce court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree.

Par. 3.

Appeals from interlocutory injunction decrees.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

Par. 4.

Expediting provision.

Section 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit, No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the

Section 3.

Proceedings to restrain or suspend orders of the commission.

**Mann-Elkins
Act.****Section 3.**

Attorney-General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

Section 4.

Proceedings to
be against the
United States.

Section 4. That all cases and proceedings in the commerce court which but for this act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

Section 5.**Par. 1.**

Attorney-General
to have charge of
interests of the
government.
Employment by
him of special
counsel.

Section 5. That the Attorney-General shall have charge and control of the interests of the Government in all cases and proceedings in the commerce court, and in the Supreme Court of the United States upon appeal from the commerce court; and if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any

Interested parties
to have right to
intervene.

suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the terms of this act, or the acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney-General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceedings unaffected by the action or non-action of the Attorney-General of the United States therein.

Mann-Elkins Act.

Section 5.

Par. 1.

Interested parties may intervene.

Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

Par. 2.

Complainants before the commission to have right to appear in subsequent proceedings.

Section 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the commerce court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other

Section 6.

Par. 1.

Proceedings before opening of commerce court.

**Mann-Elkins
Act.****Section 6.****Par. 1.**

Proceedings before
opening of com-
merce court.

court as hereby allowed before the said date shall be forthwith transferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the court from which the appeal was taken or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

Par. 2.

Duty of carrier
to designate agent
at Washington for
service of pro-
cesses, etc.

It shall be the duty of every common carrier subject to the provisions of this act, within sixty days after the taking effect of this act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate

Commerce Commission or commerce court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

Mann-Elkins Act.

Section 6.
Par. 2.

Section 15. That nothing in this act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

Section 15.
(Mann-Elkins Act.)
This act not to impair pending proceedings.

Section 16. That the President is hereby authorized to appoint a commission to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations, subject to the provisions of the act to regulate commerce, and the power of Congress to regulate or affect the same, and to fix the compensation of the members of such commission. Said commission shall be and is hereby authorized to employ experts to aid in the work of inquiry and examination, and such clerks, stenographers, and other assistants as may be necessary, which employees shall be paid such compensation as the commission may deem just and reasonable, upon a certificate to be issued by the chairman of the commission. The several departments and bureaus of the Government shall detail from time to time such officials and employees and furnish such information to the commission as may be directed by the President. For the purposes of its investigation the commission shall be authorized to incur and have paid upon the certificate of its chairman such expenses as the commission shall deem necessary: *Provided, however,* That the total expenses authorized or incurred under the provisions of this section for compensation, employees, or otherwise, shall not exceed the sum of twenty-five thousand dollars.

Section 16.
(Mann-Elkins Act.)
President to appoint commission to investigate issuance of securities by carriers.

Section 17. That no interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any

Section 17.
(Mann-Elkins Act.)
Injunction to restrain enforcement of state railroad laws.

Mann-Elkins Act.**Section 17.**

Injunctions to restrain enforcement of state railroad laws.

officer of such State in the enforcement or execution of such statute shall be issued or granted by any justice of the Supreme Court, or by any circuit court of the United States, or by any judge thereof, or by any district judge acting as circuit judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit judge, or to a district judge acting as circuit judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court of the United States or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court of the United States, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court of the United States or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney-general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court of the United States, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall only remain in force until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken directly to the Supreme Court of the United States from the order

granting or denying, after notice and hearing, an interlocutory injunction in such case.

Mann-Elkins Act.

Section 17.

Section 18. That this act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve and sixteen, which sections shall take effect and be in force immediately.

Section 18.

Taking effect of this act.

THE ELKINS ACT

AS AMENDED.

An act to further regulate commerce with foreign nations and among the states.
[Approved February 19, 1903, (32 Statutes at Large, 847); amended by act approved June 29, 1906, (34 Statutes at Large, 584).]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Section 1.

Par 1.

Carrier corporation liable to conviction as well as its officers, agents, etc.

Willful failure to file and observe tariffs, a misdemeanor.

Penalty.

Discriminations and concessions from tariff charges forbidden.

Section 1. That anything done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof,¹ which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act,¹ shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons,¹ except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts,¹ or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of ² not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give,¹ or to solicit, accept, or receive any rebate, concession, or discrimination in respect to ³ the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof ⁴ whereby any such property shall by any device whatever

- (1) The amendment of 1906 inserted the comma at this point.
- (2) The word "of" was inserted by the amendment of 1906.
- (3) The amendment of 1906 altered the word "of" to "to."
- (4) The amendment of 1906 altered the word "thereto" to "thereof."

be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof,⁴ or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether ⁵ carrier or shipper, who shall, knowingly,⁶ offer, grant, or give,⁷ or solicit, accept,⁷ or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*,⁸ That any person, or any officer or director of any corporation subject to the provisions of this act, or the act to regulate commerce and the acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed,⁷ or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

Elkins Act.**Section 1.****Par. 1.**

Penalty for knowing allowance or acceptance of discriminations and concessions from tariff charges.

Imprisonment for natural persons.

Jurisdiction of courts.

- (4) The amendment of 1906 altered the word "thereto" to "thereof."
- (5) The amendment of 1906 inserted the phrase, "whether carrier or shipper."
- (6) The amendment of 1906 inserted the word "knowingly."
- (7) The amendment of 1906 inserted the comma at this point.

(8) The amendment of 1906 substituted the passage beginning "provided," as far as the end of the sentence, for the following passage contained in the original act: "In all convictions occurring after the passage of this act for offenses under said acts to regulate commerce, whether committed before or after the passage of this act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished."

Elkins Act.**Section 1.**

Par. 2.
Act of agent that
of the Corpora-
tion.

Rates filed,
published or
participated in
conclusively
deemed the legal
rates, against the
carrier.

Par. 3.

Additional forfeit-
ure for accept-
ance of rebate.

Attorney General
to collect such
forfeiture.

In construing and enforcing the provisions of this section,⁷ the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or ⁹ shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or ⁹ shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof,¹⁰ or participates in any rates so filed or published, that rate as against such carrier, its officers ¹¹ or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

Any ¹² person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall in addition to any penalty provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to

- (9) The words “, or shipper,” were inserted by the amendment of 1906.
- (10) The amendment of 1906 substituted the word “thereof” for “thereto.”
- (11) The original Elkins act contained a comma after this word.
- (12) The following paragraph was inserted by the amendment of 1906.

believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

Section 2. That ¹³ in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Section 3. That ¹⁴ whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, where-

Elkins Act.**Section 1.****Par. 3.**

Collection of forfeitures.

Limitation of actions.

Section 2.

All persons interested in matters before the Commission and courts, may be made parties.

Section 3.

Proceedings to restrain and enjoin discriminations and departure from tariff rates.

(13) This section of the act remains as originally enacted.

(14) This section of the act remains as originally enacted.

Elkins Act.**Section 3.**

Proceedings to
restrain discrim-
inations and de-
parture from
published rates.

Duty of district
attorneys to
prosecute such
proceedings.

Such proceedings
do not preclude
actions for dam-
ages.

Compulsory atten-
dance of witness-
es, testimony and
production of
books and papers.

Immunity.

upon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February fourth, eighteen hundred and eighty-seven, entitled An act to regulate commerce and the acts amendatory thereof. And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an act entitled "An act

to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Elkins Act.**Section 3.**

Expediting Act of Feb. 11, 1903, applicable to cases prosecuted by the Attorney General in the name of the Commission.

Section 4. That ¹⁵ all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this act.

Section 4.

Conflicting laws repealed.

Section 5. That this act shall take effect from its passage.

Section 5.

Act effective from passage.

THE EXPEDITION ACT.

An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, (Approved February 11th, 1903, 32 Stat. at Large, 823), as amended by an act approved June twenty-fifth, nineteen hundred and ten. (Pub. No. 310).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved

Expedition of cases.

(15) This section was not directly amended by the amendment of 1906. See, however, section 10 of the Hepburn act, *supra*, p. 53.

**Expedition
Act.****Section 1.**

Hearing before
three judges.

When Circuit
Court is divided
in opinion.

July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court,¹ if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select;² or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be divided in opinion³ as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the circuit court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon

- (1) The amendment of 1910 substituted the word "court" for "circuit."
- (2) The remainder of this sentence was inserted by the amendment of 1910.
- (3) The amendment of 1910 substituted the remainder of this paragraph for the words "the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided."

said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought.

**Expedition
Act.**

Section 1.

Section 2.

Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

**Appeal to Su-
preme court.**

Exception.

TESTIMONY ACT.

An act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

[Approved February 11, 1893, (27 Statutes at Large 443; 2 Supp. to Rev. Stat. U. S. 80).]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the commission, whether such subpoena be signed or issued by one of more commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled, "An act to regulate commerce," approved February

**No person, ex-
cused from testi-
fying, etc., before
the Commission.**

Testimony Act. fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But shall not be prosecuted or punished on account of matters concerning which he may testify.

Punishment for refusal to testify or produce books and papers.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

IMMUNITY ACT.

An act defining the right of immunity of witnesses under the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, and an act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and an act entitled "An act to further regulate commerce with foreign nations and among the states," approved February nineteenth, nineteen hundred and three, and an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three.

[Approved June 30, 1906, (34 Statutes at Large, 798).]

Immunity under Acts of 1898 and 1903.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the act en-

titled "An act in relation to testimony before the Inter-
state Commerce Commission," and so forth, approved
February eleventh, eighteen hundred and ninety-three,
in section six of the act entitled "An act to establish the
Department of Commerce and Labor," approved Febru-
ary fourteenth, nineteen hundred and three, and in the
act entitled "An act to further regulate commerce with
foreign nations and among the States," approved Febru-
ary nineteenth, nineteen hundred and three, and in the
act entitled "An act making appropriations for the legis-
lative, executive, and judicial expenses of the Govern-
ment for the fiscal year ending June thirtieth, nineteen
hundred and four, and for other purposes," approved
February twenty-fifth, nineteen hundred and three, im-
munity shall extend only to a natural person who, in
obedience to a subpoena, gives testimony under oath or
produces evidence, documentary or otherwise, under
oath.

Immunity Act.

PART I.

The Substantive Requirements of the Act.

CHAPTER I.

INTRODUCTORY.

18. Present Defects in the Law.

Paragraph III of Section 15, as amended in 1910, gives the commission power to investigate any new rate or regulation filed, before the same goes into effect, and to suspend the operation of such rate or regulation for from four to ten months while the investigation is pending.

The same amendment requires¹ that carriers make reasonable regulations for the interchange of equipment, but does not clearly give the commission power to regulate this.

Under recent Federal decisions, findings of fact by the commission, in cases not involving claims for damages, would appear to be practically conclusive on the courts.²

(1) Section 15, par. 2, as amended, *supra*, pp. 29-30.

(2) See *infra* §331.

CHAPTER II.

SCOPE AND PURPOSE OF THE ACT.

19. Expressions by Commissioners and Courts as to the Purpose of the Act.

In *New York Cent. & H. R. R. Co. v. U. S.*,¹ Judge Day said:

"Its (the statute's) objects are to prevent favoritism and to secure equal rights to all in interstate transportation, and one legal rate, to be published and posted and accessible to all alike."

In *Re Contracts of Express Companies*,² Prouty, C., said:

"The act to regulate commerce was intended to protect the public in its relations with certain common carriers. It was not the purpose to unnecessarily interfere with the private management of the private property which is invested in the business of these carriers, and the act should be so construed as to leave to the carriers the greatest possible latitude in the management of their business, consistent with the proper protection of the public interest."

With cases in note (8) p. 69, compare also *Bulte Co. v. Chicago & A. R. Co.*³

23. The Act Applies Only to the Carrier's Duties Toward Shippers and Passengers.

A carrier may properly give to one company an exclusive contract for switching or for compressing cotton.⁴

With cases in note (26) p. 74, compare also *American Bkrs. Ass'n v. American Express Co.*⁵

(1) 212 U. S. 481, 495, (429-B).

(2) 16 I. C. C. Rep. 246, 248, (926).

(3) 15 I. C. C. Rep. 351, 364, (813).

(4) *Merchants' Co. v. Illinois Cent. R. Co.*, 17 I. C. C. Rep. 98, (1048).

(5) 15 I. C. C. Rep. 15, (735).

**24. Duty to Provide Adequate Service, Facilities, Through Routes,
Joint Rates and Switch Connections.**

To note (29) p. 75, add:

See *Oklahoma Com. v. Chicago, R. I. & P. R. Co.*⁶

The amendment of 1910 also makes it the duty of carriers to make reasonable rules for the operation of through routes and for the interchange of cars used therein and to provide reasonable compensation for those entitled thereto; see *supra* p. 3.

A carrier is not bound to enlarge its facilities in order to meet the special needs of a particular shipper under special conditions, it being sufficient if such facilities are sufficient for the community under normal conditions.⁷

(6) 17 I. C. C. Rep. 379, (1115).

(7) *Reiter v. New York, S. & W.*, 19 I. C. C. Rep. 290, (1375).

CHAPTER III.

SCOPE OF THE ACT—TRANSPORTATION AND PROPERTY SUBJECT TO THE ACT.

26. Provisions of the Act Defining its Scope.

The amendment of 1910 has included interstate telegraph, telephone, and cable companies (both wire and wireless) within the scope of the act.

The act does not apply to shipments wholly within the Territory of Alaska.¹

27. Interstate Commerce Distinguished from Intra-State—The Act not Applicable to the Latter.

As regards the power of Congress to prevent a preference of intrastate commerce over interstate, see:

Andy's Ridge Co. v. Southern Ry. Co.²

Saunders v. Southern Exp. Co.³

28. Same Subject—Concurrent Intra-State Regulations Cannot Oust Federal Jurisdiction Over Interstate Shipments—State Statutes in Conflict with the Act Void.

State statutes in conflict with the act are void.⁴

33. Same Subject—Effect of Social Circle Dictum on Later Decisions.

A case arising under the Safety Appliance act, following those in note (10) p. 83, is Pacific Coast Ry. Co. v. U. S.⁵

(1) Re Jurisdiction of Rail and Water Carriers Operating in Alaska, 19 I. C. C. Rep. 81, (1354).

Humboldt S. S. Co. v. White Pass. & Y. R., 19 I. C. C. Rep. 105, (1355).

(2) 18 I. C. C. Rep. 405, 407, (1279).

(3) 18 I. C. C. Rep. 415, 424, (1282).

Cf. also Admin. Rul. No. 140, (Feb. 2d, 1909).

(4) Penna. R. Co. v. Coggins Co., 38 Pa. Super. 129, (1909).

St. Louis S. W. R. Co. v. Arkansas, 217 U. S. 136, (1910).

Cf. also Delaware, L. & W. R. Co. v. Stevens, 172 Fed. 595, 603, 604, (1909).

Davis v. Cleveland, C. C. & S. L. R. Co., 217 U. S. 157, 177, (1910).

(5) 173 Fed. 448, (1909).

34. Same Subject—Gulf C. & S. F. R. Co. v. Texas.

Several cases have followed *Gulf C. & S. F. R. Co. v. Texas*, holding that the shipper or consignee had assumed such control over the shipment as to render the two parts of the haul distinct and independent shipments, not within the jurisdiction of the commission where wholly intra-state.⁶

A shipper cannot defeat the application of a joint through rate by constituting the carrier its agent at the junction to reship and collect charges.⁷

If, in attempting to defeat the through rate by rebilling at junction points, a shipper is subjected to tariff charges in excess of the through rates, the commission will not award him reparation.⁸

A passenger may, however, take advantage of a lower combination rate by purchasing two local tickets.⁹

(6) *Washington Co. v. Chicago, R. I. & P. R. Co.*, 15 I. C. C. Rep. 219, (783).

Carstens Co. v. Oregon, S. L. R. Co., 15 I. C. C. Rep. 429, (819).

Sunnyside Co. v. Denver & R. G. R. Co., 16 I. C. C. Rep. 558, (1014).

Cedar Hill Co. v. Colorado & S. R. Co., 16 I. C. C. Rep. 660, (1015).

Dobbs v. Louisville & N. R. Co., 18 I. C. C. Rep. 210, (1224).

Central Lumber Co. v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 495, (1294).

Admin. Rul. No. 98, (Oct. 12th, 1908).

Admin. Rul. No. 147, (Feb. 9th, 1909).

Admin. Rul. No. 170, (April 13th, 1909).

And cf. *Sunnyside Co. v. Denver & R. G. R. Co.*, 17 I. C. C. Rep. 540, (1149).

Horst Co. v. Southern Pac. R. Co., 17 I. C. C. Rep. 576, (1156).

Lull v. Minneapolis, St. P. & S. Ste. M. R. Co., 18 I. C. C. Rep. 355, (1262).

Townley Co. v. Chicago, R. I. & P. R. Co., 18 I. C. C. Rep. 378, (1270).

(7) *Stock Yards Co. v. Chicago, M. & St. P. R. Co.*, 16 I. C. C. Rep. 366, (957).

Admin. Rul. No. 98, (Oct. 12th, 1908).

See also *Wood Co. v. Cleveland, C. C. & St. L. R. Co.*, 16 I. C. C. Rep. 374, (960).

Bascom Co. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 354, (1110).

(8) *Wells Co. v. St. Louis, I. M. & S. R. Co.* 18 I. C. C. Rep. 175, (1210).

Sage v. Illinois Central R. Co., 18 I. C. C. Rep. 195, (1218).

(9) *Kurtz v. Penna. R. Co.*, 16 I. C. C. Rep. 410, 413, (971).

35. Same Subject—Proper Test not the Attitude of the Carriers but the Character of the Transaction.

In *Hood v. Delaware & H. R. Co.*,¹⁰ Commissioner Clements said:

“When a commodity is purchased in and shipped from one State to a point in another State the transaction is indelibly impressed with the character of interstate commerce, and the various mutations through which the article passes and the handlings which it undergoes while in transit are merely incidental to the movement, and every carrier by railroad that participates in the carriage of any such commodity or that performs any part of the transportation in a continuous passage from a point of origin in one State to a prescribed destination in another State, is engaged in interstate commerce and subject to the jurisdiction of the act.”

37. Same Subject—Statements by the Commission as to What Constitutes a Common Arrangement.

In *Nollenberger v. Missouri Pac. R. Co.*,¹¹ the commission held that the parties were operating under such a common arrangement as to be subject to the act. In *West Tex. Fuel Co. v. Texas & Pac. R. Co.*¹² charges for switching interstate freight were also held to be subject to the act.

38. Same Subject—Through Bills of Lading a Usual but not Necessary Incident to a Common Arrangement.

For an additional Federal decision holding that a shipment over an intra-state line was covered by the act where part of a through interstate movement, see *U. S. v. Illinois Term. R. Co.*¹³

41. Foreign Commerce.

A rate charged to a point in an adjacent foreign country was made by combining the published through rate to a point beyond the destination of the shipment, with an unpublished local foreign

(10) 17 I. C. C. Rep. 15, 20, (1035).

(11) 15 I. C. C. Rep. 595, 597, (855).

(12) 15 I. C. C. Rep. 443, (825).

(13) 168 Fed. 546, 548, (817).

See also *Standard Oil Co. v. U. S.* 179 Fed. 614, 620, (572-B).

But see as to a water line, *Mutual Transit Co. v. U. S.* 178 Fed. 664, (1221).

rate back. There was also on file a lower combination rate, made by adding the published rate to a point on the boundary of the United States to the unpublished local beyond. The commission held the exaction of the first combination unreasonable and awarded reparation on the basis of the second, taking notice of the existence of the unfilled foreign local rates.¹⁴ In another case, however, the commission refused to take notice of an unfilled water rate as part of a combination lower than the through tariff rate charged.¹⁵

In *Black Horse Co. v. Illinois Cent. R. Co.*,¹⁶ where an American road had filed and exacted from the shipper a joint through rate to a point in an adjacent foreign country but the foreign road had not concurred therein, the commission awarded reparation to the amount that the total rate exceeded the amount which the commission found to be reasonable.

A joint through rate made by an ocean carrier, from a foreign port, with a railroad in the United States from a foreign port through to destination in this country, is not within the jurisdiction of the commission.¹⁷

The commission has ruled, however, that joint through rates from Porto Rico to points in the United States are valid.¹⁸

Terminal charges in connection with traffic between points in Canada and points in the United States must be specified in the tariffs.¹⁹

(14) *Awbrey v. Galveston, H. & S. A. R. Co.*, 17 I. C. C. Rep. 267, (1085).

(15) *Milburn Co. v. Lake S. & M. S. R. Co.*, 18 I. C. C. Rep. 144, 146, (1201).

See also *De Bary v. Louisiana Western R. Co.*, 18 I. C. C. Rep. 527, (1304).

Hagar Iron Co. v. P. R. Co., 18 I. C. C. Rep. 529, (1305).

(16) 17 I. C. C. Rep. 588, (1159).

Cf. also Admin. Rul. No. 111, (Nov. 12, 1908).

Admin. Rul. No. 126 (Dec. 8, 1908).

(17) *Borgfeldt & Sons v. Southern Pac. R. Co.*, 18 I. C. C. Rep. 552, (1313).

Cf. *Humboldt S. S. Co. v. White Pass. & Y. R. Co.*, 19 I. C. C. Rep. 105, (1355).

(18) Admin. Rul. No. 201, (June 23rd, 1909).

(19) Admin. Rul. No. 191, (June 14th, 1909).

42. Rail and Water Traffic.

In *Re Jurisdiction over Water Carriers*,²⁰ the commission reversed Administrative Ruling No. 66 (May 4th, 1908), and held that water carriers were subject to the act as to such of their traffic only as was transported under a common control, management or arrangement with a rail carrier, and that as to traffic not so transported they were not subject to the act although they did some business governed by it. Commissioners Clark, Clements and Harlan dissented from the ruling.

A water line does not become subject to the act by accepting and carrying freight under a through bill of lading issued by the initial railroad, where it has not concurred in or agreed to the through rate filed by the latter, but has merely agreed with the shipper to protect a specified total charge. The "common arrangement" contemplated by the act must, as between a rail and a water line, be an arrangement among the carriers themselves, and mere continuity of transportation is not sufficient to make the water line subject to the act.²¹

As to the use of water rates not filed with the commission as parts of combination rates less than the through charges, as a basis for an award of reparation, see *supra* § 41.

As to when a municipal ferry becomes subject to the act, see Administrative Ruling No. 162 (April 12th, 1909).

44. Carriers Subject to the Act—Express Companies—Street Railways and Electric Railroads—Omnibus Companies—Stockyards Companies—Bridge Companies—Receivers.

The decision in *U. S. v. Wells Fargo Exp. Co.*, cited in note 46 of the text, has been affirmed by the Supreme Court.²²

In *West End Imp. Cl. v. Omaha & C. B. R. Co.*,²³ the commission affirmed its ruling that the rates of interstate street railways were subject to the act, but the order of the commission in this case was suspended by the Circuit Court for the district of Ne-

(20) 15 I. C. C. Rep. 205, 207, (782), (Jan. 7th, 1909).
See also Admin. Rul. No. 155, (April 5th, 1909).

(21) *Mutual Transit Co. v. U. S.* 178 Fed. 664, (1221).

(22) *American Exp. Co. et al. v. U. S.*, 212 U. S. 522, (636-B).

(23) 17 I. C. C. Rep. 239, (1083-A).

Cf. also Admin. Rul. No. 162, (April 12th, 1909).

braska, holding that the act did not apply to street passenger railways.²⁴

With cases in note (50), p. 94, compare *Union Stockyards Co. v. U. S.*,²⁵ a case arising under the Safety Appliance act.

The amendment of 1910 makes interstate telegraph, telephone and cable companies subject to the act.²⁶

Officers and employes engaged by a receiver of a railroad occupy the same position with regard to free passes as the officers and employes of any other railroad.²⁷

A railroad not otherwise subject to the act becomes subject by transporting express matter for an express company which is subject to the act.²⁸

A lessee of a road, acting simply as a contractor and not serving the public as a common carrier, is not subject to the act.²⁹

(24) *Omaha & C. B. St. Ry. Co. v. I. C. C.* Rep. 179 Fed. Rep. 243, (1083-B).

(25) 169 Fed. 404, (1909).

(26) See *supra*, p. 1.

(27) Admin. Rul. No. 165, (April 12th, 1909).

(28) Admin. Rul. No. 197, (June 21st, 1909).

(29) Admin. Rul. No. 180, (May 10th, 1909).

CHAPTER IV.

JUST AND REASONABLE CHARGES—KINDS OF RATES.

45. Through and Local Rates and Shipments Distinguished.

As to the distinction between through and local rates, see *Hood v. Delaware & H. R. Co.*¹

The mere intention by a shipper to send the freight beyond the designated point does not make the reshipment part of the original transportation or entitle the shipper to have the freight taken at the balance of the through rate.² *A fortiori*, where a consignee refuses to accept freight, the consignor is not entitled to have the freight returned part of the way without further charge.³

A shipper cannot ship locally to himself, and, after sampling, send the articles on at the balance of the through rate.⁴

For a full discussion of the legality of transit rates and of various practices in connection therewith, see *In Re Substitution of Tonnage at Transit Points*.⁵

(1) 17 I. C. C. Rep. 15, 20, (1035).

(2) *Washington Co. v. Chicago, R. I. & P. R. Co.*, 15 I. C. C. Rep. 219, (763).

Central Lumber Co. v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 495, (1294).

Admin. Rul. No. 98, (Oct. 12th, 1908).

Admin. Rul. No. 147, (Feb. 9th, 1909).

Admin. Rul. No. 170, (April 13, 1909).

See also *Carstens Co. v. Oregon S. L. R. Co.*, 15 I. C. C. Rep. 429, (819).

Acme Co. v. Chicago & A. R. Co., 17 I. C. C. Rep. 220, (1079).

(3) *Lull v. Minneapolis, St. F. & S. Ste. M. R. Co.*, 18 I. C. C. Rep. 355, (1262).

Townley Co. v. Chicago, R. I. & P. R. Co., 18 I. C. C. Rep. 378, (1270).

See also Admin. Rul. 114, (Nov. 12th, 1908).

(4) *Sunnyside Co. v. Denver & R. G. R. Co.*, 17 I. C. C. Rep. 540, (1149).

Horst Co. v. Southern Pac. R. Co., 17 I. C. C. Rep. 576, (1156).

Cf. *Block & Co. v. Louisville & N. R. Co.*, 18 I. C. C. Rep. 372, (1267).

Also recent cases cited, *supra*, §34.

(5) 18 I. C. C. Rep. 280, (1253).

See also *Douglas v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 232, 244, (925).

Where cotton is destroyed by fire at a concentration point, the owner is entitled to no refund on charges theretofore paid.⁶

A shipper cannot defeat the application of a joint through rate by constituting the carrier his agent at the junction point to reship and collect charges.⁷ If, in attempting to defeat a through rate by rebilling at junction points, a shipper is subjected to tariff charges in excess of the through rate, the commission will not award him reparation.⁸

A passenger, however, may take advantage of a lower combination rate by purchasing two local tickets.⁹

47. Proportional Rates.

With the case cited in note (23) of the text, compare *Lindsay v. Baltimore & O. S. W. R. Co.*¹⁰

The commission has refused to recognize as valid a proportional rate limited to shipments coming to the proportional rate point over the lines of a particular carrier,¹¹ but has also said that it is not *per se* unlawful to make a proportional rate lower than a local rate, and limit the application of that proportional to traffic coming from a specified territory.¹²

(6) *Anderson v. St. Louis & S. F. R. Co.*, 17 I. C. C. Rep. 12, (1033).
Henderson v. St. Louis, I. M. & S. R. Co., 18 I. C. C. Rep. 514, (1301).

(7) *Stockyards Co. v. Chicago, M. & St. P. R. Co.*, 16 I. C. C. Rep. 366, (957).

Admin. Rul. No. 98, (Oct. 12th, 1908).

See also *Wood Co. v. Cleveland, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 374, (960).

Bascom Co. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 354, (1110).

(8) *Wells Co. v. St. Louis, I. M. & S. R. Co.*, 18 I. C. C. Rep. 175, (1210).

Sage v. Illinois Cent. R. Co., 18 I. C. C. Rep. 195, (1218).

(9) *Kurtz v. Penna. R. Co.*, 16 I. C. C. Rep. 410, 413, (971).

(10) 16 I. C. C. Rep. 6, (861).

(11) *Bascom Co. v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 354, (1110).

But see *St. Paul v. Minneapolis, St. P. & S. Ste. M. R. Co.*, 19 I. C. C. Rep. 285, 288, (1374).

(12) *Serry v. Southern Pac. Co.*, 18 I. C. C. Rep. 554, (1314).

CHAPTER V.

JUST AND REASONABLE CHARGES—WHAT ARE REASONABLE RATES.

48. Provisions of the Act.

The amendment of 1910 altered Paragraph 3 of Section 1 to read as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of services."

52. Circumstances Properly Considered by Carrier in Adjusting Rates—Cost and Value of Service.

A carrier may not charge exorbitant rates though the traffic will bear such rates;¹ nor can it be required to haul goods at a loss merely because the traffic will not bear remunerative rates.²

In fixing rates, the value of the service to the shipper must be considered as well as the cost to the carrier.³

(1) *Maricopa Cl. v. Wells Fargo Exp. Co.*, 16 I. C. C. Rep. 182, (912).
Blankenship v. Big Sandy & C. R. Co., 17 I. C. C. Rep. 569, (1153).

(2) *Florida Assn. v. Atlantic C. L. R. Co.*, 17 I. C. C. Rep. 552, 560, 561, (710-B).

(3) *Duncan v. Nashville, C. & St. L. R. Co.*, 16 I. C. C. Rep. 590, 593, (1025).

53. Same Subject—Exceptional Instances in Which Rates have been Based on Cost of Service Alone—Demurrage Charges.

In *Southern Ry. Co. v. St. Louis, H. & G. Co.*,⁴ the Supreme Court reversed the decisions of the Circuit Court and Circuit Court of Appeals in the case cited in note (18) of the text, holding that the carrier was not limited to cost of service in case of re-consignment charges, but was entitled to some additional compensation.

In *Boise Club v. Adams Exp. Co.*,⁵ the commission held that an express company might not properly charge more for packages sent collect than for those where charges were prepaid, thus ignoring the value of the service to the shipper.

(4) 214 U. S. 297, 301, (384-D).

Semble contra—*Cedar Hill Co. v. Colorado & Southern Ry. Co.*, 15 I. C. C. Rep. 546, 549, (847).

(5) 17 I. C. C. Rep. 115, (1050).

CHAPTER VI.

JUST AND REASONABLE CHARGES—CIRCUMSTANCES PROPERLY CONSIDERED BY CARRIERS IN FIXING RATES—COST OF SERVICE TO THE CARRIER.

56. The Carrier Entitled to Fair Return on the Value of that Employed for the Public Convenience.

In *Cincinnati v. Cincinnati, N. O. & T. P. R. Co.*,¹ Commissioner Prouty said:

"It must also be borne in mind that the cost of operation is advancing. In the past railways have been able to introduce various economies in the handling of their business, which have tended to offset the added cost of labor and supplies, so that the net result has been that the increase in the cost of transporting a ton of freight one mile has but slightly, if at all, increased. It is doubtful if in future similar economies can keep pace with advancing prices."

In determining the reasonableness of a freight rate as between competing lines, the commission has said that it will not look solely to the line which is strongest financially, but that the charges exacted by the weaker line should not, on the other hand, be the sole test of reasonableness.²

57. Proper Method of Computing Such Value.

In *Board of Trade of Winston-Salem v. Norfolk & W. R. Co.*,³ Chairman Knapp said with reference to rates on branch lines:

"Where particular rates on a particular commodity between particular points are challenged the question of net earnings on the particular lines involved is not so important, unless it be shown that the margin of profit is so small on the system's business as a whole that a reduction in the particular

(1) 18 I. C. C. Rep. 440, 466, (183-F).

(2) *Salt Lake City Com. Cl. v. Atchison, T. & S. F. R. Co.*, 19 I. C. C. Rep. 218, 222, (1369).

(3) 16 I. C. C. Rep. 12, 17, (873).

rates would reduce the whole income below the reasonable profit point; * * * To divide the system into its constituent elements and to require that each shall show a surplus commensurate with that yielded by the business of the system as a whole in justification of a particular rate on one commodity is not the usual, and it is not believed to be the proper, basis upon which to measure the justness of such rate."

Where an increase of rates is necessary to support the road, this should be distributed equitably over the entire traffic, and not placed on a few commodities or localities.⁴

58. Distance—An Important but not Always a Controlling Factor.

In fixing rates, distance is regarded as an important,⁵ but not always a controlling factor.⁶

Mileage is most frequently disregarded in fixing rates on staple commodities.⁷

59. Distance—Grouping System of Rate Making.

The fact that a certain amount of hardship necessarily results from the grouping system of rate making is not sufficient to warrant the commission in interfering,⁸ unless the situation is mani-

(4) Newark S. & R. Bur. v. New York, O. & W. Ry. Co., 15 I. C. C. Rep. 264, 267, (796).

Los Angeles v. Atchison, T. & S. F. R. Co., 18 I. C. C. Rep. 310, 326, (1257).

Cf. Wisconsin Com. v. Chicago N. W. R. Co., 16 I. C. C. Rep. 85, 90, (890).

(5) Celina Co. v. St. Louis S. W. R. Co., 15 I. C. C. Rep. 138, 141, (759).

(6) Bulte Co. v. Chicago & A. R. Co., 15 I. C. C. Rep. 351, 362, (813).
Monroe Pr. League v. St. Louis, I. M. & S. R. Co., 15 I. C. C. Rep. 534, (845).

Des Moines Com. v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 73, 78, (1181).

(7) Fort Dodge Cl. v. Illinois Cent. R. Co., 16 I. C. C. Rep. 572, 581, 582, (1022).

(8) Kansas City Tr. Bur. v. Atchison, T. & S. F. R. Co., 16 I. C. C. Rep. 195, 203, 204, (917).

Saginaw v. Grand Tr. R. Co., 17 I. C. C. Rep. 128, (1053).

festly unfair to the complaining locality.⁹ In *Hitchman Coal Co. v. Baltimore & O. R. Co.*,¹⁰ Commissioner Clark said:

"The system of rate making by joining various points into a given group, and establishing the same rate from each point in the group to any given destination, has long been followed by the carriers. This system has contributed largely to the development of the natural resources of the country. It has served to put various producers of a given product in the same territory on an equality as to products destined to any common point of consumption. This system could not exist if distance were made the primary factor. Necessarily a group territory must have certain and definite boundary lines, and when once they have been established their extension should not be forced unless such extension is clearly warranted by the facts and circumstances in each case presented."

60. Distance—Group Rates Justified by Commercial or Market Competition.

The legality of certain group rates has been approved by the commission in a number of recent decisions.¹¹

Points in the same general rate group should ordinarily take the same rates.¹²

61. Distance—Group Rates Tested by Average Distance—Short Line Distance the Proper Test.

With regard to short-line distance in fixing rates, see *Burr v. Seaboard A. L. R. Co.*¹³

(9) *Jones Co. v. Chicago & N. W. R. Co.*, 15 I. C. C. Rep. 427, (818).

(10) 16 I. C. C. Rep. 512, 520, (1006).

(11) *Godfrey v. Texas A. & L. R. Co.*, 15 I. C. C. Rep. 65, 67, (749).

Chicago Co. v. Tioga S. E. R. Co., 16 I. C. C. Rep. 323, 334, (942).

American Coal Co. v. Baltimore & O. R. Co., 17 I. C. C. Rep. 149, (1057-A).

Lautz Bros. v. Lehigh Val. R. Co., 17 I. C. C. Rep. 167, (1064).

Muskogee Bur. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 169, (1065).

(12) *Kindelon v. Southern Pac. R. Co.*, 17 I. C. C. Rep. 251, (1084).

DuPont Co. v. Penna. R. Co., 17 I. C. C. Rep. 544, (1151).

(13) 16 I. C. C. Rep. 1, 4, (870).

62. Distance—Ton-Mile Rate Should Decrease as Length of Haul Increases.

The rate per ton-mile should ordinarily decrease as the length of haul increases.¹⁴

63. Consistency of Commodity Shipped and Method of Shipment.

The loading capacity of an article is an important consideration in fixing the rate thereon.¹⁵

Articles knocked down should ordinarily not take a higher rate than the same articles set up.¹⁶

With cases cited in note (37), p. 120, compare Beatrice Creamery Co. v. Illinois Cent. R. Co.¹⁷

65. Volume of Traffic and Amount of Shipment—Rates Should Ordinarily Decrease as Tonnage Increases.

The importance of the volume of traffic in a given commodity, in determining a rate on such commodity, has been alluded to in several cases.¹⁸

66. Same Subject—Wholesale Principle not Generally Applicable to Freight Rates.

The commission will not sanction special rates based on the amount of annual tonnage furnished by a particular shipper.¹⁹

(14) Black Mountain Co. v. Southern Ry. Co., 15 I. C. C. Rep. 286, 296, (803).

Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co., 15 I. C. C. Rep. 504, 512, (841).

Williams Co. v. Vicksburg S. & P. R. Co., 16 I. C. C. Rep. 482, 487, (996).

(15) National Hay As. v. Michigan Cent. R. Co., 19 I. C. C. Rep. 34, 47, (1343).

(16) Zang Co. v. Chicago, B. & Q. R. Co., 18 I. C. C. Rep. 337, (1259).

(17) 15 I. C. C. Rep. 109, 123-124, (756).

(18) Naylor Co. v. Lehigh Val. R. Co., 15 I. C. C. Rep. 9, (733).

Yawman & Erbe Co. v. Atchison, T. & S. F. R. Co., 15 I. C. C. Rep. 260, 262-263, (795).

Acme Co. v. Lake Shore & M. S. R. Co., 17 I. C. C. Rep. 30, 36, (1038).

(19) Hitchman Coal Co. v. Baltimore & O. R. Co., 16 I. C. C. Rep. 512, 517, (1006).

67. Same Subject—Exceptions.

The commission has refused to require carriers to put in force carload rates less than the any-quantity rate.²⁰ It has several times, however, required the allowance of mixed carloads.²¹

68. Same Subject—Summary of Decisions.

As regards the legality of lower rates on shipments of ten or more carloads see *Carstens Co. v. Oregon S. L. R. Co.*²²

69. Nature of the Service.

To cases cited in note (60), p. 127, add:—

See also *Fairmont Creamery Co. v. Pacific Exp. Co.*²³

*Interstate Co. v. American Exp. Co.*²⁴

70. Rates over Branch Lines and Narrow Gauge Roads.

As to rates on narrow gauge lines, see *Lauer v. Nevada-Cal.-Or. R. Co.*; ²⁵ *Bunch v. Nevada-Cal.-Or. R. Co.*; ²⁶ *Omaha v. Chicago & N. W. R. Co.*²⁷

As to rates on "feeder" branch lines, see quotation from *Winston-Salem v. Norfolk & W. R. Co.*,²⁸ *supra* § 57.

(20) *Duncan v. Nashville C. & St. L. R. Co.*, 16 I. C. C. Rep. 590, 595, (1025).

Cf. *Bentley v. Lake Shore & M. S. R. Co.*, 17 I. C. C. Rep. 56, (1041).

(21) *Florida, etc. Assn. v. Atlantic C. L. R. Co.*, 17 I. C. C. Rep. 552, 567, (710-B).

Rotsted Co. v. Chicago & N. W. R. Co., 18 I. C. C. Rep. 257, (1240).

Chatfield Co. v. Louisville & N. R. Co., 18 I. C. C. Rep. 385, (1273).

(22) 15 I. C. C. Rep. 429, (819; 17 I. C. C. Rep. 324, 328, (1105).

(23) 15 I. C. C. Rep. 134, (757).

(24) 16 I. C. C. Rep. 436, (982).

(25) 17 I. C. C. Rep. 488, (1139).

(26) 17 I. C. C. Rep. 506, (1144).

(27) 19 I. C. C. Rep. 156, 159, (1368).

(28) 16 I. C. C. Rep. 12, 17, (873).

See also *Acme Co. v. Chicago & N. W. R. Co.*, 18 I. C. C. Rep. 105, 106, (1188).

Billings v. Chicago, B. & Q. R. Co., 19 I. C. C. Rep. 71, 75, (1351).

Traffic Bureau v. Southern Pac. R. Co., 19 I. C. C. Rep. 259, (1372).

In the case last cited Commissioner Lane said (p. 261): "We do not recognize the right of a carrier to single out a piece of expensive road

72. Miscellaneous Circumstances Affecting Cost of Service—Bridge Charges—Special Facilities, etc.

A carrier may properly refuse to receive C. O. D. packages of intoxicating liquors where it appears that this is a reasonable business regulation because of the special circumstances surrounding the traffic.²⁹

As to the proper considerations applicable to the determination of sleeping car rates, see *Loftus v. Pullman Co.*³⁰

As to rates on private baggage and sleeping cars, see *Chappelle v. Louisville & N. R. Co.*; ³¹ also Administrative Ruling No. 138, (Feb. 2nd, 1909).

and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is built and operated as a whole, and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths."

(29) *Davis Co. v. Platt*, 172 Fed. 775, (1909).

Burke v. Platt, 172 Fed. 777, (1909).

(30) 18 I. C. C. Rep. 135, (1199). (See dissenting opinion, p. 138).

(31) 19 I. C. C. Rep. 56, (1346).

CHAPTER VII.

JUST AND REASONABLE CHARGES—VALUE OF THE SERVICE TO THE SHIPPER.

73. General Commercial Prosperity.

As regards the relation of the prosperity of an industry to the rates it may properly be required to pay, see also *Hitchman Coal Co. v. Baltimore & O. R. Co.*¹ and *Darling v. Baltimore & O. R. Co.*²

The commission has said that the fact that a commodity moves freely under a given rate is not conclusive evidence that such rate is reasonable.³

74. Market Value of Commodities Shipped.

Although the value of articles shipped is an important consideration in fixing the rate charged for transportation,⁴ it does not follow in every case that articles of higher value take higher rates.⁵

Staple commodities, of low value per ton, usually take low rates.⁶

Materials do not always take rates lower than the products thereof.⁷

(1) 16 I. C. C. Rep. 512, 519, (1006).

(2) 15 I. C. C. Rep. 79, 81, 86, (754).

(3) *Omaha Com. Cl. v. Anderson & S. R. Co.*, 18 I. C. C. Rep. 532, 536, (1307).

(4) *Darling v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 79, 81, 86, (754).

James v. Baltimore & O. R. Co., 17 I. C. C. Rep. 273, (1086).

(5) See *American Coal Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 149, (1057-A).

Phila. & R. R. Co. v. Interstate C. C., 174 Fed. 687, (1057-B).

Association v. Chicago & N. W. R. Co., 16 I. C. C. Rep. 405, 409, (970).

(6) *Darling v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 79, 84, (754).
Cf. Winters Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 587, 589, (1024).

(7) *Douglas v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 232, (925).
And see *Jennison Co. v. Great Nor. R. Co.*, 18 I. C. C. Rep. 113, (1190).

The rate on a commodity need not vary with the differing value of the same article as produced by different shippers.⁸

Second hand articles need not be placed in a separate class from the same articles new.⁹

77. Same Subject—Carriers are Justified in Equalizing Natural Advantages by Differences in Rates.

In fixing rates to or from a given locality, carriers may properly take into account its geographical location.¹⁰

(8) *Hafey v. St. Louis & S. F. R. Co.*, 15 I. C. C. Rep. 245, (792).

See also *Cohen v. Southern Ry. Co.*, 16 I. C. C. Rep. 177, (911), where the commission seemingly disapproved of a rate varying with the value to which the article in question was released.

(9) *National Mach. Co. v. Pittsburgh, C., C. & St. L. R. Co.*, 11 I. C. C. Rep. 581, (422).

Whitcomb v. Chicago & N. W. R. Co., 15 I. C. C. Rep. 27, (737).

(10) *Avery Co. v. Atchison, T. & S. F. R. Co.*, 16 I. C. C. Rep. 20, 24, (874).

CHAPTER VIII.

JUST AND REASONABLE CHARGES—ADDITIONAL CIRCUMSTANCES CONSIDERED BY THE COMMISSION AND THE COURTS IN PASSING ON THE REASONABLENESS OF RATES.

80. General Principles.

To note (2), p. 139 add:—

See also, *Williams v. Wells Fargo Exp. Co.*¹¹

To note (3), p. 139 add:—

See also, *Sanford v. Western Exp. Co.*¹²

81. Effect of Proposed Order—Elaborate System of Rates will not be Disturbed Unless Clearly Necessary.

In *Chicago Co. v. Tioga, S. E. R. Co.*,¹³ Commissioner Clements said:

“The decision of the Commission must be based upon broad principles of justice, founded upon the important and controlling facts as they may apply to all of the parties in interest.”

An elaborate rate relation will not be disturbed without good reason.¹⁴

82. Same Subject—Creation of Causes of Complaint on the Part of Other Shippers.

Where to grant the relief asked would create a preference of the complainant community over some other locality not repre-

(11) 18 I. C. C. Rep. 17, (1168).

(12) 16 I. C. C. Rep. 32, (879).

(13) 16 I. C. C. Rep. 323, 333, (942).

See also *Des Moines v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 73, 79, (1181).

(14) *Kansas City Tr. Bur. v. Atchison, T. & S. F. R. Co.*, 15 I. C. C. Rep. 491, 498, (838).

Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co., 15 I. C. C. Rep. 504, 509, (841).

Kansas City Tr. Bur. v. Atchison, T. & S. F. R. Co., 16 I. C. C. Rep. 195, (917).

Williams Co. v. Vicksburg, S. & P. R. Co., 16 I. C. C. Rep. 482, (996).

Fort Dodge Cl. v. Illinois Cent. R. Co., 16 I. C. C. Rep. 572, (1022).

sented, the commission will hesitate to act, except where clearly necessary.¹⁵

The fact that the abuse complained of has long continued will not deter the commission from abolishing it.¹⁶

83. Effect of Proposed Order on Revenue of Carriers.

In investigating the financial status of a carrier, the purpose of the commission is to ascertain not whether it is so prosperous that its rates *should* be reduced, but rather whether its revenues are such that rates *could* be reduced.¹⁷

85. Voluntary Continuance by Carriers of a Given Rate for a Long Period.

The long maintenance of a rate amounts to an admission by the carrier that it is reasonable, and throws on the latter the burden of justifying an advance in the rate.¹⁸

Paragraph 4 of Section 15 of the act as amended in 1910 provides that "at any hearing involving a rate increase after Jan. 1st, 1910, or of a rate sought to be increased after the passage of this

(15) *Kindel v. New York, N. H. & H. R. R. Co.*, 15 I. C. C. Rep. 555, 558, (849-A).

Lautz Bros. v. Lehigh Val. R. Co., 17 I. C. C. Rep. 167, (1064).

Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co., 16 I. C. C. Rep. 56, 71, (886).

(16) *Boise Cl. v. Adams Exp. Co.*, 17 I. C. C. Rep. 115, 119, (1050).

(17) *Spokane v. Northern Pac. R. Co.*, 19 I. C. C. Rep. 162, 173, (816-B).

(18) *North Bros. v. Chicago, M. & St. P. R. Co.*, 15 I. C. C. Rep. 70, (752).

Darling v. Baltimore & O. R. Co., 15 I. C. C. Rep. 79, 80, (754).

Barton Co. v. St. Louis, I. M. & S. R. Co., 15 I. C. C. Rep. 222, (784).

Newark Sh. Bur. v. New York, O. & W. R. Co., 15 I. C. C. Rep. 264, (796).

Indiana S. & W. Co. v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 155, 161, (908).

Memphis Cot. Oil Co. v. Illinois Cent. R. Co., 17 I. C. C. Rep. 313, 318, (1103).

Laning-Harris Co. v. Chicago, B. & Q. R. Co., 18 I. C. C. Rep. 11, (1165).

Liverpool Salt Co. v. Baltimore & O. R. Co., 18 I. C. C. Rep. 51, (1174).

And cf. Kizer Co. v. Central of Ga. R. Co., 17 I. C. C. Rep. 430, 440, (569-B).

act, the burden of proof to show that the increased rate is just and reasonable shall be on the common carrier."

86. Same Subject—Circumstances Justifying Advances of Long Standing Rates.

The presumption of reasonableness arising from the voluntary continuance of a rate by the carrier may, however, be rebutted by the carrier.¹⁹ Thus a rate originally made very low to meet market competition may be somewhat increased as such competition disappears.²⁰

Where at the time of the rate increase the carload minimum is correspondingly lowered, the increase has been sustained by the commission.²¹

The presumption does not apply to an advance in the actual rate charged resulting simply from adherence to published tariffs, concessions from which had been habitually granted in the past.²²

To note (30), p. 147 add:—

See also, *Lagomarcino Co. v. Illinois Cent. R. Co.*²³

Where a long standing rate is increased, kept in force but a short time and then reduced to the former figure, this is regarded as a very strong indication that the increased rate was unreasonable; ²⁴ but even in cases of this kind the carrier may justify the

(19) *Green Bay Assn. v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 59, (748).

(20) *Schoenhofen Co. v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 329, (1106).

And see *Peale v. Central R. of N. J.*, 18 I. C. C. Rep. 25, 34-35, (1171).
But see amendment to section 4, of the act, *infra*, §87.

(21) *Liebold Co. v. Delaware, L. & W. R. Co.*, 17 I. C. C. Rep. 503, (1142).

(22) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 15 I. C. C. Rep. 370, 373, (815).

National Lumb. Co. v. San Pedro, L. A. & S. L. R. Co., 15 I. C. C. Rep. 434, (822).

(23) 16 I. C. C. Rep. 151, (967).

(24) *Parlin v. St. Louis, I. M. & S. R. Co.*, 15 I. C. C. Rep. 145, (761).
Arkansas Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 95, (892).
Kansas City Hay Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 100, (893).

Sunderland Bros. v. Pere Marquette R. Co., 16 I. C. C. Rep. 450, (989).

Tyler Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 490, (998).

higher charge, by showing, for instance, that the lower rate resulted from competition and that the higher charge was in itself reasonable.²⁵

In its ultimate analysis the whole matter always resolves itself into a question as to whether, from the entire circumstances surrounding the rate situation, the commission or court is of opinion that the rate charged was reasonable and proper at the time it was exacted. The long maintenance of a rate or its advance or voluntary reduction by the carrier is simply an evidentiary fact bearing on the reasonableness of the rate.

87. Voluntary Reduction of Rate not a Conclusive Admission of Prior Unreasonableness—Provisions of Amendment of 1910.

Although the voluntary reduction of a rate by a carrier is in the nature of an admission of its prior unreasonableness,²⁶ this circumstance is not of itself sufficient to induce the commission to award reparation to shippers on the basis of the rate previously in

Acme Co. v. Lake S. & M. S. R. Co., 17 I. C. C. Rep. 30, 35, (1038).

Van Brunt Co. v. Chicago, M. & St. P. R. Co., 17 I. C. C. Rep. 195, (1073).

Omaha Com. Cl. v. Southern P. Co., 18 I. C. C. Rep. 53, (1175).

Sprunt v. Seaboard A. L. R. Co., 18 I. C. C. Rep. 251, (1238).

Millar v. New York, C. & H. R. R. Co., 19 I. C. C. Rep. 78, (1352).

Gamble Co. v. St. Louis & S. F. R. Co., 19 I. C. C. Rep. 114, (1359).

(25) *Fuller & Co. v. Pittsburgh, C. & Y. R. Co.*, 17 I. C. C. Rep. 594, (1162).

Wilson Co. v. Colorado & So. R. Co., 18 I. C. C. Rep. 220, (1226).

Kentucky Wagon Co. v. Illinois Cent. R. Co., 18 I. C. C. Rep. 360, (1264).

(26) *Cedar Hill Co. v. Colorado & So. R. Co.*, 15 I. C. C. Rep. 546, 549, (847).

Diehl v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 190, (915).

Great W. Co. v. Atchison, T. & S. F. R. Co., 16 I. C. C. Rep. 505, (1004).

Winters Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 562, (1016).

Crane v. Cincinnati, H. & D. R. Co., 16 I. C. C. Rep. 571, (1020).

Olympia Co. v. Northern P. R. Co., 17 I. C. C. Rep. 178, (1067).

Penna. Co. v. Old Dom. S. S. Co., 18 I. C. C. Rep. 197, (1219).

Southern Co. v. Southern P. Co., 18 I. C. C. Rep. 232, (1230).

Glavin Co. v. Chicago & N. W. R. Co., 18 I. C. C. Rep. 241, (1232).

Clark Co. v. Buffalo & S. R. Co., 18 I. C. C. Rep. 380, (1271).

force.²⁷ In *Foster Lumber Co. v. Atchison, T. & S. F. R. Co.*,²⁸ Commissioner Lane said:

"It must be apparent that it is to the interest of the shipping public in nowise to embarrass carriers in decreasing rates when they think such decrease equitable. Under existing standards, all will admit that there can be a wide divergence of opinion as to what a reasonable rate between two points may be, and any policy pursued by this commission tending to make it burdensome to the carriers to reduce a rate would in the end work a hardship to shippers. For those reasons it would appear unwise for this commission to adopt a policy by which, upon the voluntary reduction of a rate, a shipper who had previously paid the higher rate should recover as damages whatever difference there might be between the rate which he was compelled to pay and the rate newly established by the railroad, where application had not been made either to the railroad or to the commission for a reduction of the rate prior to the time at which the railroad itself made such reduction and where it does not clearly appear that the rate was at the time unreasonable. The presumption does not necessarily arise because a reduction is made by a railroad that the rate previously existing was unreasonable under the conditions and circumstances then obtaining. Any other theory than this would compel us to the absurd conclusion that for an indeterminate period, perhaps barred only by the statute of limitation within the act, a shipper would be entitled to a progressive series of awards of reparation depending upon the number of reductions which

(27) *Commercial Coal Co. v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 11, 14, (734).

Menafee Co. v. Texas & P. R. Co., 15 I. C. C. Rep. 49, (745).

Harlow Co. v. Atlantic C. L. R. Co., 15 I. C. C. Rep. 501, 503, (840).

Foster Co. v. Gulf C. & S. F. R. Co., 17 I. C. C. Rep. 385, (1117).

Wabash Mills v. Wabash R. Co., 18 I. C. C. Rep. 91, (1183).

Consumers Co. v. Atchison, T. & S. F. R. Co., 18 I. C. C. Rep. 277, (1251).

Lamb Co. v. Michigan Cent. R. Co., 18 I. C. C. Rep. 279, (1252).

Coors v. Southern Pac. Co., 18 I. C. C. Rep. 352, (1261).

But see *Penrod Co. v. Chicago, B. & Q. R. Co.*, 15 I. C. C. Rep. 326, (808).

(28) 15 I. C. C. Rep. 56, (747).

the railroad made. * * * Under the law carriers must initiate rates, and so long as they do not abuse the right conferred upon them by the statute the commission is not justified in penalizing them."

The amendment of 1910 added to Section 4 the following paragraph:

"Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

Similarly, where, subsequent to a shipment at the sum of local rates, a lower joint through rate is established, this fact is not of itself a conclusive admission of the unreasonableness of the rate charged.²⁹

88. Investment of Capital by Shippers in Reliance on Continuance of Rates in Question.

In passing on the reasonableness of an increase in a rate or the alteration of a classification, the commission has given considerable weight to the fact that industries have been built up or capital expended on the faith of its continuance.³⁰

This rule does not apply, however, in all cases,³¹ and the mere

(29) *Stock Yards Co. v. Missouri, K. & T. R. Co.*, 17 I. C. C. Rep. 295, (747).

Quammen Co. v. Chicago G. W. R. Co., 18 I. C. C. Rep. 599, (1328)

But see *American Sugar Co. v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 288 (930).

Havemeyer v. Union Pac. R. Co., 17 I. C. C. Rep. 13, (1034).

(30) *Beatrice Creamery Co. v. Illinois Cent. R. Co.*, 15 I. C. C. Rep. 109, 128, (756).

Mountain Ice Co. v. Delaware, L. & W. R. Co., 15 I. C. C. Rep. 305, 309, 312, (806-A).

Chilton Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 10, (872).

Douglas v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 232, 237, (925).

See also *Valley Mills v. Atchison, T. & S. F. R. Co.*, 16 I. C. C. Rep. 73, 76, (887).

(31) See *Green Bay Assn. v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 59, 63-64, (748).

fact that a shipper has made a bid on the basis of an existing rate does not entitle him to reparation if the rate is increased before the completion of his contract.³²

In refusing to enjoin the enforcement of the commission's order in *Western Or. Co. v. Southern Pac. R. Co.*,³³ cited in note (35), p. 149, the court held that the order of the commission was not based solely on the fact that the complainants' industries had been built up on the faith of the lower rates formerly in force.³⁴

89. The Commission will not make an Order Tending to Equalize Natural Advantages.

Although the commission has stated on several occasions that it will not compel carriers to equalize natural advantages,³⁵ yet a number of its recent decisions would seem to tend toward such equalization.³⁶

(32) *Barnum Works v. Cleveland, C., C. & St. L. R. Co.*, 18 I. C. C. Rep. 94, (1185).

See also *infra*, § 244.

(33) 14 I. C. C. Rep. 61, 72, 74, (667).

(34) *Southern Pac. Co. v. I. C. C.*, 177 Fed. 963, (667-C).

(35) *Beatrice Creamery Co. v. Illinois Cent. R. Co.*, 15 I. C. C. Rep. 109, 124, (756).

Virginia Co. v. St. Louis S. W. R. Co., 16 I. C. C. Rep. 49, 52, (885).

Chicago Co. v. Tioga S. E. R. Co., 16 I. C. C. Rep. 323, 331, (942).

Cf. Valley Mills v. Atchison, T. & S. F. R. Co., 16 I. C. C. Rep. 73, 76, (887).

Colorado Coal Assn. v. Colorado & S. R. Co., 18 I. C. C. Rep. 572, 576, (1319).

(36) *Kalispell Co. v. Great Nor. R. Co.*, 16 I. C. C. Rep. 164, 169-170, (909).

Big Bl. Co. v. Northern P. R. Co., 16 I. C. C. Rep. 173, (910).

Winters Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 587, 589, (1024).

American Coal Co. v. Baltimore & O. R. Co., 17 I. C. C. Rep. 149, (1057-A).

Phila. & R. R. Co. v. Interstate C. C., 174 Fed. 687, (1057-B).

Acme Co. v. Chicago G. W. R. Co., 18 I. C. C. Rep. 19, 23, (1169).

Jennison Co. v. Great Nor. R. Co., 18 I. C. C. Rep. 113, (1190).

Andy's Ridge Co. v. Southern Ry. Co., 18 I. C. C. Rep. 405, (1279).

Arlington Co. v. Southern Pac. Co., 19 I. C. C. Rep. 148, (1367*).

90. Comparison of Rates.

In *Milwaukee v. Chicago, R. I. & P. R. Co.*,³⁷ Commissioner Harlan said:

"As all authorities in such matters agree, one of the most satisfactory tests of the reasonableness of the rates of one carrier is a comparison with the rates of other carriers operating in the same territory under the same general conditions."

92. Same Subject—Presumption of Reasonableness of Rates—Burden of Proof.

To cases in note (53), p. 154 add:—

*Omaha Com. Cl. v. Southern Pac. Co.*³⁸

See also, *Memphis Co. v. Illinois Cent. R. Co.*³⁹

But see *Taylor v. Missouri Pac. R. Co.*⁴⁰

94. Same Subject—Rates Between Different Points on the Same Road.

The rates in different directions on the same line between the same points need not be identical.⁴¹

95. Same Subject—Rates Over Other Lines.

Comparison of rates over other lines is of little value unless substantial similarity of conditions be shown.⁴²

(37) 15 I. C. C. Rep. 460, 466, (829).

(38) 18 I. C. C. Rep. 53, 56, (1175).

(39) 17 I. C. C. Rep. 313, 318-319, (1103).

(40) 15 I. C. C. Rep. 165, (767).

(41) *Lauer v. Nevada-Cal.-Or. R. Co.*, 17 I. C. C. Rep. 488, (1139).

Bunch v. Nevada-Cal.-Or. R. Co., 17 I. C. C. Rep. 506, (1143).

Littell v. St. Louis S. W. R. Co., 18 I. C. C. Rep. 187, (1215).

Wilburine Oil Works v. Penna. R. Co., 18 I. C. C. Rep. 548, (1311).

(42) *Minneapolis Co. v. Chicago, St. P., M. & O. R. Co.*, 16 I. C. C. Rep. 193, (916).

Acme Co. v. Lake S. & M. S. R. Co., 17 I. C. C. Rep. 30, 34, (1038).

In *Chicago Co. v. Tioga S. E. R. Co.*, 16 I. C. C. Rep. 323, 328, (942), Clements, C., said:

"Each case must be decided upon its own merits, and in arriving at a conclusion in respect to the rates here involved, the decisions in another case against carriers operating in a different territory under essentially dissimilar circumstances and conditions affords no proper criterion therefor."

In *Colorado Bedding Co. v. Chicago, B. & Q. R. Co.*,⁴³ Commissioner Cockrell said:

"We have uniformly held that the existence of a lower rate via a competing route does not of itself establish the unreasonableness of the rate actually charged."

97. Same Subject—Through Rates Should Normally be Less Than Sum of Locals.

A through rate should normally be less than the sum of the local rates over the same route.⁴⁴

99. Same Subject—Through Rates Exceeding Combined Locals Prima Facie Unreasonable.

The amendment of 1910 inserted in Section 4 a provision making it unlawful "to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act."

The following decisions were rendered before the above amendment went into effect:

Through rates in excess of the sum of the locals are to that extent *prima facie* unreasonable.⁴⁵

(43) 18 I. C. C. Rep. 403, 404, (1278).

(44) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 56, (886).

Kindel v. New York, N. H. & H. R. R. Co., 15 I. C. C. Rep. 555, (849-A).

Cf., however, *Chicago, R. I. & P. R. Co. v. I. C. C.*, 171 Fed. 680, 683, (697-B), (849-B).

(45) *Porter v. St. Louis & S. F. R. Co.*, 15 I. C. C. Rep. 1, (731).
Lindsay v. Michigan Cent. R. Co., 15 I. C. C. Rep. 40, (741).

Lindsay v. Lake S. & M. S. R. Co., 15 I. C. C. Rep. 284, (802).

Michigan Buggy Co. v. Grand Rap. & I. R. Co., 15 I. C. C. Rep. 297, (804).

MacGillis v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 329, (809).

Hartman Co. v. Wisconsin Cent. R. Co., 15 I. C. C. Rep. 530, (842).

Monroe Pr. L. v. St. Louis, I. M. & S. R. Co., 15 I. C. C. Rep. 534, (845).

American Cigar Co. v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 618, (864).

Gilchrist v. Lake E. & W. R. Co., 16 I. C. C. Rep. 318, (940).

This principle applies to passenger as well as to freight rates.⁴⁶ In *Windsor Co. v. Chesapeake & O. R. Co.*,⁴⁷ Commissioner Clark said:

"Except in special and unusual circumstances, and respecting fully the limitations placed in tariffs upon the use of basing, proportional or arbitrary rates, the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled."

The rates should be corrected by lowering the combination rate and not by advancing the through rate.⁴⁸

Scully Co. v. Lake S. & M. S. R. Co., 16 I. C. C. Rep. 358, (954).
Stock Yards Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 366, (957).

Blodgett Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 384, (963).
Empire Works v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 401, (969).
Lee-Warren Co. v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 422, (975).

Lindsay v. Grand Rap. & I. R. Co., 16 I. C. C. Rep. 441, (985).
Smith Co. v. Chicago, M. & G. R. Co., 16 I. C. C. Rep. 447, (987).
Humbird Co. v. Northern P. R. Co., 16 I. C. C. Rep. 449, (988).
Morse v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 550, 557, (1013).
Lauer v. Nevada-Cal.-Or. R. Co., 17 I. C. C. Rep. 488, (1139).
Montgomery Fr. Bur. v. Louisville & N. R. Co., 17 I. C. C. Rep. 521, 531, (1148).

Milburn Co. v. Lake S. & M. S. R. Co., 18 I. C. C. Rep. 144, (1201).
Stevens Co. v. Grand Rap. & I. R. Co., 18 I. C. C. Rep. 147, (1202).
Lorleburg Co. v. New York C. & St. L. R. Co., 18 I. C. C. Rep. 183, (1213).

Noble v. Vicksburg C. & P. R. Co., 18 I. C. C. Rep. 224, (1228).
Ryan v. Great Nor. R. Co., 18 I. C. C. Rep. 226, (1229).
Rosenblatt & Sons v. Chicago & N. W. R. Co., 18 I. C. C. Rep. 261, (1242).

See also *infra* §296a.

Cf. Dayton v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 82, (889).

(46) *U. S. v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 470, (832).

(47) 18 I. C. C. Rep. 162, 164, (1206).

(48) *New Orleans Bd. of Tr. v. Louisville & N. R. Co.*, 17 I. C. C. Rep. 231, (1082).

The commission has refused to make a general order condemning all through rates exceeding the sum of the locals.⁴⁹

The presumption of unreasonableness in such cases applies only where the lower combination was in fact available for the particular shipment in question.⁵⁰ It is immaterial, however, that the several local rates making the combination provide different minima, if the total actual charge is less than the through rate.⁵¹

The presumption does not apply where the combination is composed in part of unreasonably low rates prescribed by State authorities.⁵²

As to the use of an unfilled water rate as part of a combination less than the through rate, see *supra* § 41.

100. Same Subject—Significance of Division of Through Rates Among Connecting Carriers.

The reasonableness of a joint through rate cannot properly be tested by the divisions thereof among the several carriers.⁵³

To note (94), pp. 165-166 add:—

Pepperell Co. v. Texas So. R. Co.⁵⁴

Acme Co. v. Chicago & N. W. R. Co.⁵⁵

(49) Michigan Buggy Co. v. Grand Rap. & I. R. Co., 15 I. C. C. Rep. 297, 299, (804).

(50) Harlow Co. v. Atlantic C. L. R. Co., 15 I. C. C. Rep. 501, (880).
And cf. Diehl v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 190, (915).
Delray Co. v. Detroit, T. & I. R. Co., 18 I. C. C. Rep. 245, (1234).
See also Winona Co. v. Penna. R. Co., 18 I. C. C. Rep. 334, (1258).

(51) Marble Falls Co. v. Houston & T. C. R. Co., 15 I. C. C. Rep. 167, (1337).

(52) Marble Falls Co. v. Houston & T. R. Co., 15 I. C. C. Rep. 167, (768).

Advance Co. v. Orange & N. W. R. Co., 15 I. C. C. Rep. 599, (856).
Kurtz v. Penna. R. Co., 16 I. C. C. Rep. 410, 415, (971).
Cf. also Lindsay v. Baltimore & O. S. W. R. Co., 16 I. C. C. Rep. 6, (871).

White v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 288, (1091).

(53) Bulte Co. v. Chicago & A. R. Co., 15 I. C. C. Rep. 351, 362, (813).

(54) 16 I. C. C. Rep. 353, (952).

(55) 18 I. C. C. Rep. 105, (1188), (see dissenting opinion).

101. Concert of Action by Naturally Competitive Lines in Fixing the Rates Under Investigation.

Although concert of action by carriers in fixing or increasing a rate is regarded as a significant fact,⁵⁶ this alone will not justify the commission in ordering its reduction.⁵⁷

103. Opinions of State Railroad Commissions.

Although rates prescribed by State authorities are entitled to respectful consideration,⁵⁸ yet in case of interstate rates the commission exercises its own independent judgment.⁵⁹

The fact that a State commission has prescribed unreasonably low intra-state rates obviously does not justify the carrier in making up the deficiency by exacting excessive charges on interstate traffic.⁶⁰

(56) *Kiser Co. v. Central of Ga. R. Co.*, 17 I. C. C. Rep. 430, 440, (569-B).

(57) *Bristol v. Vicksburg & G. W. R. Co.*, 15 I. C. C. Rep. 453, 454, (828).

Chicago Co. v. Tioga S. E. R. Co., 16 I. C. C. Rep. 323, 334, (942).

(58) *Bartles Co. v. Chicago, M. & St. P. R. Co.*, 17 I. C. C. Rep. 146, (1056).

(59) *Hafey v. St. Louis & S. F. R. Co.*, 15 I. C. C. Rep. 245, (792).

Saunders v. Southern Exp. Co., 18 I. C. C. Rep. 415, 421, (1282).

And see *Paola Ref. Co. v. Missouri, K. & T. R. Co.*, 15 I. C. C. Rep. 29, 31, (738).

(60) *Wisconsin Com. v. Chicago & N. W. R. Co.*, 16 I. C. C. Rep. 85, 89, (890).

CHAPTER IX.

JUST AND REASONABLE CHARGES—REGULATIONS AFFECTING RATES.

105. Classification of Freight.

The amendment of 1910 inserted the following paragraph in Section 1 of the act:

“And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.”

In *Acme Co. v. Lake S. & M. S. R. Co.*,¹ Chairman Knapp said:

“The commission is disposed to encourage the making of class rates wherever practicable, because of their tendency to uniformity and stability. It is only in cases where it clearly appears that the inclusion of a given article in a class results in unreasonable charges, and a lower classification will not meet the demands of justice, that commodity rates are required to be established.”

(1) 17 I. C. C. Rep. 30, 35, (1038).

A commodity rate is usually lower than class rates covering the same commodity, but need not necessarily be so.²

A tariff provision permitting the shipper to use either the class or commodity rating would seem reasonable and proper.³

In *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*,⁴ Commissioner Clark said:

"The publication of a commodity rate takes the commodity upon which such rate applies out of the classification, so that all shipments of that commodity moving from and to points between which such commodity rate is in effect must be charged for on the basis of the commodity rate and carload minimum. However, if the alternative use of class or commodity rates is necessary or desired, it may be provided by including in different sections of the same tariff the class and commodity rates, and by including in each section the specific rule: 'If the rates in section * * * of this tariff make a lower charge on any shipment than the rates in section * * * of this tariff, the rates in section * * * will be applied.' "

106. Same Subject—Simplicity and Uniformity the Object of Classification.

In *Forest City Fr. Bur. v. Ann Arbor R. Co.*,⁵ Commissioner Clark said:

"Classification is not an exact science; nor may a rating accorded a particular article be determined alone by the yard-stick, the scales, and the dollar."

(2) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 15 I. C. C. Rep. 367, (814).

See also *Wheeling Co. v. Baltimore & O. R. Co.*, 18 I. C. C. Rep. 125, (1195).

(3) *Tritch Co. v. Rutland R. Co.*, 17 I. C. C. Rep. 542, (1150).

Tritch Co. v. Chicago, R. I. & P. R. Co., 18 I. C. C. Rep. 71, (1180).

(4) 16 I. C. C. Rep. 56, 70, (886).

(5) 18 I. C. C. Rep. 205, 206, (1222).

107. Same Subject—Mathematical Accuracy Impossible—Substantial Approximation only Required.

The commission has held that ties ⁶ and poles ⁷ should properly be classed with lumber, but that pine lumber or ties might take a rate lower than oak; ⁸ that coal tar pitch should be classed with coal tar paving cement; ⁹ old canvas with junk; ¹⁰ stack chimney brick with common brick; ¹¹ egg-case material with box lumber; ¹³ box-shooks with lumber; ¹⁴ plaster board almost as low as plaster; ¹⁶ saw-dust with fuel wood; ¹⁷ but that blacksmith coal, being a distinct commodity from ordinary bituminous coal, might properly be given a higher rate. ¹⁸ It has also held that mole traps in crates should not be rated higher than when packed in barrels or boxes; ¹⁹ that parts of a dredging machine ready to be put together should be rated as machinery and not as structural steel; ²⁰ and that the same was true of elevator controllers, parts of a hoisting ma-

(6) *Beekman Co. v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 528, (1009).

American Tie Co. v. Kansas City So. R. Co., 175 Fed. 28, (1102).

Continental Co. v. Texas & Pac. R. Co., 18 I. C. C. Rep. 129, (1197).

(7) *Macgillis v. Chicago & E. I. R. Co.*, 16 I. C. C. Rep. 40, (882).

Partridge Co. v. Great N. R. Co., 17 I. C. C. Rep. 276, (1087).

(8) *Continental Co. v. Texas & P. R. Co.*, 18 I. C. C. Rep. 129, (1197).

(9) *Barrett Mfg. Co. v. Louisville & N. R. Co.*, 15 I. C. C. Rep. 196, (778).

(10) *Channon v. Lake S. & M. S. R. Co.*, 15 I. C. C. Rep. 551, (848).

(11) *Alphons Co. v. Southern Ry. Co.*, 16 I. C. C. Rep. 584, (1023).

(13) *Anderson Co. v. Chicago, R. I. & P. R. Co.*, 18 I. C. C. Rep. 48, (1173).

(14) *Sawyer Co. v. St. Louis, I. M. & S. R. Co.*, 19 I. C. C. Rep. 141, (1365).

(16) *Sackett Co. v. Buffalo, R. & P. R. Co.*, 18 I. C. C. Rep. 374, (1268).

(17) *Plummer Co. v. Northern Pac. R. Co.*, 18 I. C. C. Rep. 530, (1306).

(18) *Sligo Co. v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 139, 142, (1054).

(19) *Reddick v. Michigan C. R. Co.*, 16 I. C. C. Rep. 492, (999).

(20) *Link Belt Co. v. Chicago & N. W. R. Co.*, 16 I. C. C. Rep. 566, (1018).

chine,²¹ and also of chain used for the transmission of power,²² that coffee-pot percolators should be classed lower than fancy coffee percolators;²³ that brass covered iron tubing should be rated between iron and brass tubing;²⁴ that horse blankets were properly classed with other blankets;²⁵ that malaga grapes were properly rated higher than domestic grapes;²⁶ that butter boxes need not be classed with wooden pails;²⁷ that burnt cotton need not be given a lower rate than other cotton;²⁸ and acid phosphate need not have the same rate as phosphate rock.²⁹

As to gas grates and iron fire places and grates, see also, *Ohio Foundry Co. v. Pittsburgh, C., C. & St. L. R. Co.*³⁰

108. Same Subject—Classification May not be Based on Use to Which Commodity is to be Put.

In *Metropolitan Brick Co. v. Ann Arb. R. Co.*,³¹ the commission affirmed its ruling that a classification of bricks, based on the use to which they were put, was not necessary or proper; it later held, however, that a higher rate on the more valuable kind of bricks was proper.³²

(21) *Otis Co. v. New York, C. & H. R. R. Co.*, 17 I. C. C. Rep. 3, (1030).

(22) *Woodward & Co. v. Chicago, B. & Q. R. Co.*, 18 I. C. C. Rep. 500, (1296).

(23) *Landers v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 511, (1145).

(24) *Merle Co. v. New York C. & H. R. R. Co.*, 17 I. C. C. Rep. 475, (1137).

(25) *Forest City Fr. Bur. v. Ann Arbor R. Co.*, 18 I. C. C. Rep. 205, (1222).

(26) *Connolly Co. v. Penna. R. Co.*, 17 I. C. C. Rep. 283, (1089).

(27) *Roach v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 172, (1209).

(28) *Lesser v. Georgia R. Co.*, 18 I. C. C. Rep. 478, (1289).

(29) *Bash Fertilizer Co. v. Wabash*, 18 I. C. C. Rep. 522, (1303).

(30) 19 I. C. C. Rep. 65, (1349).

(31) 17 I. C. C. Rep. 197, (1074).

(32) *James v. Boston & M. R. Co.*, 17 I. C. C. Rep. 273, (1086).

See also *Davis v. West Jersey Exp. Co.*, 16 I. C. C. Rep. 214, (921).

Alphons Co. v. Southern Ry. Co., 16 I. C. C. Rep. 584, (1023).

Merle Co. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 471, (1136).

And cf. *American Coal Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 149, (1057-A).

110. Miscellaneous Regulations Affecting Rates—Minimum Carload Regulations.

In allowing carload rates, the carrier may properly stipulate for a minimum carload,³⁸ the more approved method being to charge a given rate per 100 pounds for any excess, rather than to allow the shipper to load as much as he chooses in the car at a stated rate per car.³⁴

In *Sunderland Co. v. Missouri, K. & T. R. Co.*,³⁵ Commissioner Harlan said:

“When a car is demanded and loaded by the shipper and is tendered and otherwise handled as a carload, and no minimum carload weight is legally provided, the carload rate, if it makes less than the less than carload rate, must be applied on the actual weight.”

Carriers are not bound to establish different minima for each variety of fairly similar commodities.³⁶ Minima for refrigeration and for transportation should ordinarily be the same.³⁷

The reduction in a carload minimum has been held to justify an advance in the rate to a figure to preserve the carload earnings.³⁸ Although an increase of the minimum with the size of the car used is proper,³⁹ the rate should correspondingly shrink for each foot under the standard length.⁴⁰

Although a minimum need not be so low that the prescribed amount can be loaded under all circumstances,⁴¹ yet if it is in ex-

(33) See Tar. Circ. 15-A, Rule 77. (May 29th, 1907).

(34) *Leonard v. Chicago & A. R. Co.*, 3 I. C. C. Rep. 241, (85).

(35) 18 I. C. C. Rep. 425, 426, (1283).

(36) *Montague v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 72, 80, (1043).

(37) *Ozark Assn. v. St. Louis & S. F. R. Co.*, 16 I. C. C. Rep. 106, 108, (895).

(38) *Florida Assn. v. Atlantic C. L. R. Co.*, 17 I. C. C. Rep. 552, 559, (710-B).

(39) *Pease Co. v. San Pedro, L. A. & S. L. R. Co.*, 17 I. C. C. Rep. 223, (1080).

(40) *Carstens Co. v. Northern P. R. Co.*, 14 I. C. C. Rep. 577; 15 I. C. C. Rep. 431, (820).

(41) *Montague v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 72, 76, (1043).

cess of the amount which could ordinarily be loaded in the car furnished, it is to that extent unreasonable.⁴²

The commission has said that a carload minimum on perishable fruit should be as high as could be carried under the most advantageous circumstances, with a rate per 100 pounds as low as possible, based on the high minimum.⁴³

Minimum carload rules should be based on the capacity of the cars used by the carrier and need not vary with or conform to the needs, desire or convenience of shippers.⁴⁴

Tariffs should provide that where a shipper orders a car of a certain size, ordinarily used by the carrier, and the latter furnishes for the shipment a larger car,⁴⁵ or two smaller cars of larger com-

(42) *Cambria Steel Co. v. Great Nor. R. Co.*, 12 I. C. C. Rep. 466, (540).

Wiemer v. Chicago & N. W. R. Co., 12 I. C. C. Rep. 462, (539).

And see *Consolidated F. Co. v. Southern Pac. R. Co.*, 10 I. C. C. Rep. 590, 607-8, 615, (371).

Romona Stone Co. v. Vandalia R. Co., 13 I. C. C. Rep. 115, (583).

Georgia Stone Co. v. Georgia R. Co., 13 I. C. C. Rep. 401, 403, (625).

Romona Stone Co. v. Chicago, I. & L. R. Co., 13 I. C. C. Rep. 569, (583).

Tayntor Co. v. Montpelier & W. R. Co., 14 I. C. C. Rep. 136, (676).

Rosenbaum Co. v. Missouri, K. & T. R. Co., 15 I. C. C. Rep. 499, (839).

Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co., 15 I. C. C. Rep. 504, 527, (841).

Montague v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 72, (1043).

Black Horse Tob. Co. v. Illinois C. R. Co., 17 I. C. C. Rep. 588, (1161).

See also *Peerless Co. v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 218, (1078).

Pease Co. v. San Pedro, L. A. & S. L. R. Co., 17 I. C. C. Rep. 223, (1080).

(43) *Ozark Assn. v. St. Louis & S. F. R. Co.*, 16 I. C. C. Rep. 106, 109, (895).

(44) *Ozark Assn. v. St. Louis & S. F. R. Co.*, 16 I. C. C. Rep. 134, 136, (901).

(45) *Suffern Hunt & Co. v. Indiana, D. & W. R. Co.*, 7 I. C. C. Rep. 255, 282, (232).

Wiemer v. Chicago & N. W. R. Co., 12 I. C. C. Rep. 462, (539).

American Lumb. Co. v. Southern P. Co., 14 I. C. C. Rep. 561, (721).

General Chem. Co. v. Norfolk & W. R. Co., 15 I. C. C. Rep. 349, (812).

Beggs v. Wabash R. Co., 16 I. C. C. Rep. 208, (918).

Hanna Co. v. Northern P. R. Co., 16 I. C. C. Rep. 289, (931).

Cf. also Admin. Rul. No. 120, (Nov. 13th, 1908).

And see *Wheeler Co. v. Southern P. Co.*, 16 I. C. C. Rep. 547, (1012).

bined capacity,⁴⁶ the rate and minimum applicable to the car actually ordered should be applied to the entire shipment.

In *Kaye v. Minnesota & I. R. Co.*,⁴⁷ Commissioner Harlan said:

"A carload rate and minimum weight specified in a lawful tariff hold out a definite offer to the shipping public to move merchandise on those terms, and there should be a rule in all tariffs to the effect that when a carrier, for its own convenience, supplies a larger car than the one ordered, it will do so on the basis of the published rate and minimum weight applicable to the length of car so ordered by the shipper, in all cases where the shipment actually moved could have been loaded into the car ordered."

Carriers are not, however, in all cases bound to furnish a car of the exact size to suit the needs of any shipper,⁴⁸ and a carrier having no double-deck cars for sheep is not bound to carry sheep in single deck-cars at the double-deck rate.⁴⁹ In one case the commission held that, even though the shipper had not ordered a car of a particular size, the carrier could collect freight only on the actual weight, the car furnished being larger than required for the shipment tendered.⁵⁰ Commissioners Clark, Clements, and Lane dissented in this case.⁵¹ A "two for one" rule should

(46) *Pacific Pur. Co. v. Chicago & N. W. R. Co.*, 12 I. C. C. Rep. 549, (559).

General Chem. Co. v. Norfolk & W. R. Co., 15 I. C. C. Rep. 349, (812).

Racine Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 488, (997).

Jobbins v. Chicago & N. W. R. Co., 17 I. C. C. Rep. 297, (1095).

Springer v. El P. & S. W. R. Co., 17 I. C. C. Rep. 322, (1104).

Maldonado v. Ferrocarril de Sonora, 18 I. C. C. Rep. 65, (1178).

(47) 17 I. C. C. Rep. 209, 211, (1075).

See also *Kaye v. Minnesota & I. R. Co.*, 16 I. C. C. Rep. 285, 287, (929).

(48) *Falls & Co. v. Chicago, R. I. & P. R. Co.*, 15 I. C. C. Rep. 269, (797).

(49) *Carstens Co. v. Southern P. Co.*, 17 I. C. C. Rep. 6, (1031).

But cf. Admin. Rul. No. 120, (Nov. 13th, 1908).

(50) *Peerless Co. v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 218, (1078).

(51) Cf. also *Pope Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 400, (1122).

As to the necessity of a demand on each of several connecting carriers for the particular size of car desired. see *Slimmer v. Penna. Co.*, 16 I. C. C. Rep. 531, (1010).

properly include incidental expenses such as switching.⁵² Where such a rule is applied to light and bulky articles, the articles to which it is to apply as well as the precise minima enforced should be specified, in order to prevent manipulation by dishonest shippers.⁵³

A rule providing a 4,000 or 5,000 pound minimum on articles too long to be loaded in a 36-foot box car was held unreasonable,⁵⁴ but one providing such a minimum for articles actually carried in an open car because too long to load in a 40½-foot car was held to be reasonable.⁵⁵

A minimum of 5,000 pounds on plate glass shipments was held unreasonable as to shipments in box cars, where other freight could be loaded with the glass.⁵⁶

110-a. Miscellaneous Regulations Affecting Rates—Loading and Unloading.

The commission has said that there is no absolute rule requiring that either a carrier or shipper should unload carload freight, and that what is a reasonable regulation may well vary in different localities and with different commodities. It has held that in cases of fruit and vegetables at Chicago, the carrier is bound to make delivery at the car doors no matter whether the carload is owned entirely by one person or is consigned to a general consignee for distribution among a number of owners. In this case it

(52) *Milwaukee Falls Co. v. Chicago, M. & St. P. R. Co.*, 16 I. C. C. Rep. 217, (922).

(53) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 254, 260, (927).

(54) *Brunswick Co. v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 165, (1207).

Houston Co. v. Wabash R. Co., 18 I. C. C. Rep. 208, (1223).

(55) *Jones v. Southern Ry. Co.*, 18 I. C. C. Rep. 150, (1203).

Knox v. Wabash R. Co., 18 I. C. C. Rep. 185, (1214).

(56) *Bennet v. Minneapolis, St. P. & S. Ste. Marie Co.*, 15 I. C. C. Rep. 301, (805).

Cf. *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 15 I. C. C. Rep. 370, (815).

was also held that the carrier was not bound to provide platforms for assorting carload freight consigned to distributing agents, and that if it did so, it might make a reasonable charge for the service.⁵⁷

The decision just referred to has been construed by the commission in two subsequent cases. In *Davies v. Illinois Cent. R. Co.*,⁵⁸ it was held that the service for which, under the order of the commission, the carriers were authorized to make an additional charge of one cent per 100 pounds, did not necessarily cover a distribution of the freight to the respective owners thereof, but simply an assortment and delivery at the car door. In *Wholesale Fr. & Pr. Ass'n. v. Atchison, T. & S. F. R. Co.*,⁵⁹ it was held that the fact that assistance was furnished by the carriers for unloading fruit and vegetables at Chicago did not produce an undue preference of such traffic and locality because of a refusal to furnish assistance on the same terms at St. Paul and Minneapolis or for other freight at Chicago.⁶⁰

It has also been held that a tariff providing for loading and unloading by the carriers at their convenience was illegal and discriminatory and that, irrespective of the provision as to the carrier's convenience, such a tariff was not complied with merely by a delivery of the freight at the car door.⁶¹

The commission has passed on the reasonableness of a regulation for reweighing freight in case of dispute by the shipper, hold-

(57) *Wholesale Fr. & Pr. Assn. v. Atchison, T. & S. F. R. Co.*, 14 I. C. C. Rep. 410, (705-A).

(58) 17 I. C. C. Rep. 186, (1070).

See also *Davies v. Louisville & N. R. Co.*, 18 I. C. C. Rep. 540. (1309).
Davies v. Illinois Cent. R. Co., 19 I. C. C. Rep. 3, (1334).

(59) 17 I. C. C. Rep. 596, (705-B).

(60) See also *Utica Tr. Bur. v. New York Central & H. R. R. Co.*, 18 I. C. C. Rep. 271, (1249).

Hazel Co. v. St. Louis, A. & T. H. R. Co., 5 I. C. C. Rep. 57, 67, (140).
Penna. St. Millers Assn. v. Phila. & R. R. Co., 8 I. C. C. Rep. 531, (283).

Beaumont v. Phila. & R. R. Co., 38 Super. Ct. (Pa.) 224, (1909).

(61) *Schultz Co. v. Southern P. Co.*, 18 I. C. C. Rep. 234, (1231).
See also cases in note (58), *supra*.

ing that overweights of one per cent., or 500 pounds, must be corrected, and that the existing regulation correcting only overweights of two per cent., or 1,000 pounds, was unreasonable.⁶²

It has held that a regulation whereby shippers of lumber in open cars are required to stake and secure loads for safe carriage is not unreasonable, the rate being presumably made with reference to this requirement.⁶³ An allowance of 500 pounds for stakes in such shipments was held to be reasonable.⁶⁴

A rule restricting shipments of oil over a small branch line to one day a week was enlarged by the commission to two days.⁶⁵ A tariff requirement that the name of the ultimate destination of the freight be given at the shipping point as a prerequisite to securing transit privileges has been held unreasonable,⁶⁶ as has also one increasing the rate on articles not marked in a specified manner.⁶⁷ A rule prescribing double rates on shipments of powder less than 10,000 pounds has been held unreasonable as applied to shipments of amounts between 5,000 and 10,000 pounds.⁶⁸

The commission has also ruled that where a steam shovel is shipped on its own wheels and parts of the shovel are at the same time shipped with it, the parts should be carried at the rate applicable to the shovel, and a rule so providing should be filed and enforced.⁶⁹

(62) *Rice v. Georgia R. Co.*, 14 I. C. C. Rep. 75, (668).

(63) *National Lumb. D. Assn. v. Atlantic C. L. R. Co.*, 14 I. C. C. Rep. 154, (678).

See also *Hezel Milling Co. v. St. Louis, A. & T. H. R. Co.*, 5 I. C. C. Rep. 57, 67, (140).

(64) *Duluth Log Co. v. Minnesota & S. R. Co.*, 15 I. C. C. Rep. 192, (777); 15 I. C. C. Rep. 627, (866).

(65) *National Petroleum Co. v. Louisville & N. R. Co.*, 15 I. C. C. Rep. 473, (833).

(66) *Roper Co. v. Chicago & N. W. R. Co.*, 16 I. C. C. Rep. 382, (962).

(67) *Ellsworth Co. v. Union Pacific R. Co.*, 17 I. C. C. Rep. 182, (1168).
See also *Racine Co. v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 142, (1200).

(68) *Aetna Co. v. Chicago, M. & St. P. R. Co.*, 17 I. C. C. Rep. 165, (1062).

Cf. Admin. Rul. No. 152, (Mar. 1st, 1909).

(69) *Vulcan Co. v. Missouri P. R. Co.*, 18 I. C. C. Rep. 265, (1243).

As to lighterage rules in New York Harbor approved by the commission, see *Mosson Co. v. Pennsylvania R. Co.*⁷⁰

The New York Public Service Commission has recently rendered a decision dealing with the duty to furnish special equipment and with loading and unloading regulations.⁷¹

(70) 19 I. C. C. Rep. 30, (1342).

(71) Opinion No. 68. (Nov. 4, 1909).

CHAPTER X.

JUST AND REASONABLE CHARGES—SERVICES INCIDENTAL TO TRANSPORTATION PROPER.

112. Refrigeration Charges.

Carriers may properly refuse refrigeration on less-than-carload shipments or may require twenty-four hours' advance notice by shippers of the need of refrigerator cars; they may also charge for refrigeration on cars iced by them and not loaded by the shipper.¹

As to charges for re-icing, see *California Fr. Gr. Ex. v. Santa Fe Ref. Desp. Co.*²

An extra rental charge for the use of a refrigerator car has been condemned by the commission.³

113. Demurrage Charges.

In *Peale v. Central R. Co. of New Jersey*,⁴ Commissioner Clark said:

"It is undoubtedly the right of defendant to establish and maintain demurrage regulations under which a reasonable charge will accrue for detention of cars beyond a reasonable period. We may even go further: An obligation rests upon defendant to so conduct its business that all of its patrons shall be accorded, without discrimination to any, the fullest and freest use of its equipment and facilities, and if coercive measures become necessary to accomplish that end they will be viewed with favor so long as they are reasonable and subject none to undue prejudice or disadvantage."

In *Lynah & Read v. Baltimore & O. R. Co.*⁵ the same Commissioner again said:

(1) *Asparagus Gr. As. v. Atlantic Coast Line R. Co.*, 17 I. C. C. Rep. 423, (1129).

(2) 17 I. C. C. Rep. 404, (1123).

(3) *Olympia Co. v. Northern P. R. Co.*, 17 I. C. C. Rep. 178, (1067).

(4) 18 I. C. C. Rep. 25, 35, (1171).

(5) 18 I. C. C. Rep. 38, 44, (1172).

"Notwithstanding the fact that one of the primary reasons for demurrage is to release equipment and again place it in the transportation service, an equally important end sought to be obtained by such regulations is the use of defendant's tracks and terminals for all of its patrons."

Carriers frequently allow shippers an option of entering into an agreement whereby demurrage is computed on a monthly average basis. The commission has refused to compel a carrier to reckon demurrage on a yearly instead of the usual monthly average basis,⁷ or to require it to consolidate the average detention of a shipper's cars at all tidewater ports.⁸

Where a shipper is working on straight demurrage, the time should follow the car into the hands of a new consignee on change of ownership, but where on an average agreement, no credit need be given for free time still due the original consignee.⁹

A carrier cannot properly collect demurrage for delay due to its own neglect,¹⁰ but, on the other hand, delays by the consignee in having vessels ready to receive the freight at destination will not excuse the payment of demurrage.¹¹

The fact that cars on which demurrage is charged have been embargoed prior to the accrual of the demurrage does not affect the right of the carrier to collect the same,¹² nor is it a valid de-

(7) *Peale v. Central R. Co. of New Jersey*, 18 I. C. C. Rep. 25, 36, (1171).

Lynah & Read v. Baltimore & O. R. Co., 18 I. C. C. Rep. 38, 44, (1172).

(8) *Lynah & Read v. Baltimore & O. R. Co.*, 18 I. C. C. Rep. 38, 44, (1172).

(9) *Lynah & Read v. Baltimore & O. R. Co.*, 18 I. C. C. Rep. 38, 45, (1172).

(10) *Germain Co. v. New Orleans & N. E. R. Co.*, 17 I. C. C. Rep. 22, 25, (1036).

And cf. *Rossie Co. v. New York Central & H. R. R. Co.*, 17 I. C. C. Rep. 392, (1119).

Admin. Rul. No. 117, (Nov. 13th, 1908).

Admin. Rul. No. 142, (Feb. 8th, 1909).

(11) *Lynah & Read v. Baltimore & O. R. Co.*, 18 I. C. C. Rep. 38, 46, (1172).

(12) *Peale v. Central R. Co. of New Jersey*, 18 I. C. C. Rep. 25, 27, (1171).

fense to the imposition of demurrage charges that the cars in question were not the property of the carrier exacting the demurrage.¹³

A shipper will not be relieved of demurrage, exacted in accordance with tariff provisions, because of unusual weather conditions, especially where, by proper foresight, he might have averted the accrual thereof.¹⁴ It is proper, however, to insert in tariffs a provision that demurrage shall be refunded in case of the interference of weather so severe as to prevent or seriously hinder unloading.¹⁵

Neglect by the carrier to notify the consignor of the consignee's delay in accepting a shipment does not relieve the consignor of liability for demurrage thereby accruing.¹⁶

The fact that the carrier's terminal facilities are in excess of the traffic does not require it to relax its demurrage regulations.¹⁷

As a general rule, demurrage is assessable against a carload shipment only at the point of origin or destination or at a re-consigning or transit point.¹⁸

Demurrage resulting from refusal by a shipper to pay rates in excess of published tariffs should be refunded, and the same is true of unreasonable charges demanded on shipments as to which no rates are published,¹⁹ but demurrage is properly charged during the pendency of a controversy between carrier and shipper resulting from a cancellation by the carrier of the shipper's credit account.²⁰

(13) *Peale v. Central R. Co., of New Jersey*, 18 I. C. C. Rep. 25, 34, (1171).

(14) *Hutchinson Co. v. Baltimore & O. R. Co.*, 16 I. C. C. Rep. 360, (955).

(15) Admin. Rul. No. 135, (Jan. 27th, 1909).

(16) *Germain Co. v. Phila., B. & W. R. Co.*, 18 I. C. C. Rep. 96, (1186).

(17) *Peale v. Central R. Co., of New Jersey*, 18 I. C. C. Rep. 25, 35, (1171).

(18) *Monroe v. Michigan C. R. Co.*, 17 I. C. C. Rep. 27, 28-29, (1037).
Tioga Coal Co. v. Chicago, R. I. & P. R. Co., 18 I. C. C. Rep. 414, (1281).

(19) *Northern Lumber Mfg. Co. v. Texas & P. R. Co.*, 15 I. C. C. Rep. 54, (1345).

(20) *Fisk & Sons v. Boston & M. R. Co.*, 19 I. C. C. Rep. 299, 300, (1379).

Demurrage is properly computed from the time of sending the notice of arrival of the car and not from the time of the shipper's receipt of such notice.²¹

As to whether demurrage may be exacted by a carrier holding a car by reason of the refusal of a connecting line to accept it for removal to destination, see *Germain Co. v. New Orleans & N. E. R. Co.*; ²² also *Monroe v. Michigan Central R. Co.*,²³ and Admin. Rul. No. 144 (Feb. 8th, 1909).

The relative free time for export and domestic lumber was held reasonable in *New Orleans Bd. of Tr. v. Illinois Central R. Co.*²⁴

The free time for unloading flour at Philadelphia and New York was discussed but its reasonableness not passed on in *Brey v. Pennsylvania R. Co.*²⁵

The commission has refused to decide whether, in a given case, demurrage should be paid by the consignor or by the consignee.²⁶

To note (5), p. 204 add:—

*Turnbull Co. v. Erie R. Co.*²⁷

*Peale v. Central R. Co. of N. J.*²⁸

To note (7), p. 204 add:—

The commission has refused to order reparation on account of shipments made before this ruling and subsequently paid under protest.²⁹

For further definition of private cars and private sidetracks and demurrage rules relative to the same, see Administrative Rulings Nos. 121, 122, 123 (Nov. 14th, 1908), and 128 (Dec. 10th, 1908).

(21) *Murphy v. New York Central & H. R. R. Co.*, 17 I. C. C. Rep. 457, (1131).

Central R. Co. of N. J. v. Hite & Rafetto, 171 Fed. 370, (764-B).

See also *Peale v. Central R. Co. of N. J.*, 18 I. C. C. Rep. 25, 37, (1171).

(22) 17 I. C. C. Rep. 22, 26, (1036).

(23) 17 I. C. C. Rep. 27, 29, (1037).

(24) 17 I. C. C. Rep. 496, (1141).

(25) 16 I. C. C. Rep. 497, (1001).

(26) Admin. Rul. No. 96, (Oct. 12th, 1908).

(27) 17 I. C. C. Rep. 123, (1051).

(28) 18 I. C. C. Rep. 25, 36, (1171).

(29) *Cambria Steel Co. v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 484, (836).

See also as to demurrage rules in general, Administrative Ruling No. 223 (May 12th, 1908).

114. Reconsignment Charges.

Reconsignment charges need not be based solely on the cost of the service; the carrier is entitled to a reasonable profit.³⁰

The commission regards reconsignment not as a right but a privilege on the part of the shipper, and will not compel a carrier to extend the same except to prevent unjust discrimination,³¹ nor will it make retroactive a privilege voluntarily extended by the carrier subsequent to the shipment in question, by ordering reparation on the basis of the new rule.³²

Where part of a switching charge is absorbed by the line carrier, the reasonableness of the charge is tested by the balance which the shipper must pay and not by the amount received by the switching road.³³

A charge of \$5 per car for switching coal at El Paso was held unreasonable and \$3 prescribed as a reasonable charge.³⁴ A

(30) *Southern R. Co. v. St. Louis, H. & G. R. Co.*, 214 U. S. 297, 301, (384-D).

Semble contra, *Cedar Hill Co. v. Colorado & S. R. Co.*, 15 I. C. C. Rep. 546, 549, (847).

(31) *Cedar Hill Co. v. Colorado & S. R. Co.*, 16 I. C. C. Rep. 387, 393, (965); 17 I. C. C. Rep. 479, 487, (1138).

(32) *Sunnyside Co. v. Denver & R. G. R. Co.*, 16 I. C. C. Rep. 558, (1014).

Cady Lumber Co. v. Missouri Pac. R. Co., 19 I. C. C. Rep. 12, (1336).

Admin. Rul. No. 166, (April 13th, 1909).

See also *Cedar Hill Co. v. Colorado & S. R. Co.*, 16 I. C. C. Rep. 560, (1015).

But cf. *Block v. Louisville & N. R. Co.*, 18 I. C. C. Rep. 372, (1267).

See also *Washer Grain Co. v. Missouri Pacific R. Co.*, 15 I. C. C. Rep. 147, 150-151, (763).

(33) *Utica Bur. v. New York, O. & W. R. Co.*, 18 I. C. C. Rep. 168, (1208).

Cf. *Los Angeles v. Atchison, T. & S. F. R. Co.*, 18 I. C. C. Rep. 310, 322, (1257).

(34) *West Texas Fuel Co. v. Texas & P. R. Co.*, 15 I. C. C. Rep. 443, (825); 17 I. C. C. Rep. 491, (1140).

charge of \$5 merely for changing the consignee at destination was also held unreasonable and reduced to \$1.⁸⁵

The commission has held that carriers might not properly make an extra charge for delivering or receiving freight on industrial sidings where such were part of its regular terminal facilities, except as to freight brought in by a foreign road.⁸⁶

A storage charge is in the nature of a penalty designed to keep stations clear of freight.⁸⁷

The decision in *Stickney v. Interstate Commerce Commission*,⁸⁸ cited in notes 13 and 14 pp. 205 and 206, has been affirmed by the Supreme Court.⁸⁹

115. Switching, Storage, Terminal and Elevation Charges.

To note (15), p. 206 add:—

See also *Washer Grain Co. v. Missouri Pac. R. Co.*⁴⁰

(35) *Beekman Co. v. Kansas City Southern R. Co.*, 17 I. C. C. Rep. 86, (1044).

(36) *Los Angeles v. Atchison, T. & S. F. R. Co.*, 18 I. C. C. Rep. 310, (1257).

(37) *Gough & Co. v. Illinois Central R. Co.*, 15 I. C. C. Rep. 281, (801).
Wilson Co. v. Pennsylvania R. Co., 16 I. C. C. Rep. 116, (680-B).

(38) 164 Fed. 638, (399-D).

(39) 215 U. S. 98, (399-F).

(40) 15 I. C. C. Rep. 147, 150-151, (763).

CHAPTER XI.

DISCRIMINATIONS AND PREFERENCES—GENERAL SCOPE OF THE PROHIBITION.

117. Provisions of the Act.

The amendment of 1910, although leaving Sections 2 and 3 in their original forms, has altered Section 4 in several essential particulars, the most important being to strike out the words "under substantially similar circumstances and conditions."¹ The effect of this change is discussed *infra*, Chaps. XII, XVI, and XVII.

118. Distinction Between Sections 1, 2, 3 and 4.

Section 4, as amended in 1910, is no longer merely an instance of a preference between localities, for while competition still renders a preference reasonable without the approval of the commission, it no longer necessarily justifies a greater charge for the less distance.

121. Not all Discriminations and Preferences Prohibited.

The amendment of 1910 struck out the words "under substantially similar circumstances and conditions" from Section 4; see *infra*, Chaps. XII, XVI and XVII.

Not every discrimination is prohibited but only such discriminations as are unjust and such preferences as are undue and unreasonable.²

122. Same Facilities Need not be Furnished at all Points.

Arrangements for export traffic need not be established at all points.³

(1) See *supra*, p. 9.

(2) *Gamble-Robinson Co. v. Chicago & N. W. R. Co.*, 168 Fed. 161, 164, (852).

Herbeck Co. v. Baltimore & O. R. Co., 17 I. C. C. Rep. 88, 89, (1045).
Peavey v. Northern P. R. Co., 176 Fed. 409, 424, (351-D).

(3) *Farmers' Co. v. Great Northern R. Co.*, 17 I. C. C. Rep. 406, (1124).

123.—The Above Provisions of the Act Relate only to Performance of Duties *Qua* Common Carrier.

A carrier may properly make an exclusive contract with one company for switching or for compressing cotton.⁴

With cases in note (24), p. 214 compare—

American Bankers' Ass'n. v. American Exp. Co.⁵

126. Practices Tending to Produce Discriminations Condemned.

The commission looks with disfavor on any rule or practice which, although not in itself technically illegal, would furnish an opportunity and temptation for discrimination.⁶

129.—Same Subject—Cases Under Section 3.

To note (40), p. 220 add:—

See also Wholesale Ass'n. v. Atchison, T. & S. F. Ry. Co.⁷

To note (41), p. 220 add:—

See also Cozart v. Southern Ry. Co.⁸

And cf. Gaines v. Seaboard Air Line R. Co.⁹

To note (42), p. 220 add:—

See also Douglas v. Chicago, R. I. & P. Ry. Co.¹⁰

American Tie Co. v. Kansas City Southern R. Co.¹¹

131. Discriminations by a Carrier in Favor of Itself.

The decision of the Circuit Court of Appeals in Chicago & A. R. Co. v. I. C. C.,¹² holding that cars furnished a given shipper for loading with coal for the carrier's own use need not be counted

(4) Merchants Co. v. Illinois Central R. Co., 17 I. C. C. Rep. 98, (1048).

(5) 15 I. C. C. Rep. 15, (735).

(6) Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co., 16 I. C. C. Rep. 254, 260, (927).

Schultz Co. v. Southern Pacific Co., 18 I. C. C. Rep. 234, (1231).

(7) 17 I. C. C. Rep. 596, 602, (705-B).

(8) 16 I. C. C. Rep. 226, (924).

(9) 16 I. C. C. Rep. 471, (993).

(10) 16 I. C. C. Rep. 232, 242, (925).

(11) 175 Fed. 28, (1102).

as part of such shipper's *pro rata* share of equipment, was reversed by the Supreme Court.¹³

In *Cedar Hill Coal Co. v. Atchison, T. P. & S. F. Ry. Co.*,¹⁴ Commissioner Prouty said:

"So long as there is identity of ownership in the agency of transportation and the thing transported, it is extremely difficult, if not impossible, to prevent discrimination between shippers."

To note (48), p. 222 add:—

See also *American Bankers' Ass'n. v. Baltimore & O. R. Co.*¹⁵

As to free transportation of trucks of cars destroyed on foreign lines, see Administrative Ruling No. 224 (May 12th, 1908).

134. Same Subject—How far Carriers are Entitled to Consult Their Own Interest in Fixing Relative Rates Producing Discriminations.

In *Milwaukee v. Chicago, R. I. & P. R. Co.*,¹⁶ Commissioner Harlan said:

"In general, the carrier may demand of the shipping public nothing beyond a reasonable compensation for the services rendered. It cannot force its services upon a shipper or insist upon carrying his shipment to one market when he desires to reach another market. It has no right to insist that a shipment shall go to the end of its rails if the shipper desires

(12) 173 Fed. 930, (631-B).

(13) *Interstate Commerce Commission v. Illinois Central R. Co.*, 215 U. S. 452, 477-478, (631-C).

(14) 15 I. C. C. Rep. 73, 78, (753-A).

Cf. *Grand J. Co. v. Colorado Midland R. Co.*, 16 I. C. C. Rep. 452, 456, (990).

(15) 15 I. C. C. Rep. 15, 21-25, (735).

(16) 15 I. C. C. Rep. 460, 464, (829).

See also *Kansas City Fr. Bur. v. Atchison, T. & S. F. R. Co.*, 15 I. C. C. Rep. 491, 495-496, (838).

Standard Lime Co. v. Cumberland Valley R. Co., 15 I. C. C. Rep. 620, (855).

Northern Coal Co. v. Colorado & S. R. Co., 16 I. C. C. Rep. 369, (959).

Acme Co. v. Chicago, G. W. R. Co., 18 I. C. C. Rep. 19, 21, (1169).

it to be diverted at an intermediate point to another market off its rails. Nor may the carrier accomplish these results indirectly by any unreasonable adjustment of its rate schedules with that end in view. It can not lawfully compel the shipping public to contribute to its revenues on any such grounds."

In *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*,¹⁷ Commissioner Clements said:

"There is no warrant in the law for the maintenance of a rate or rule for the purpose of restricting the movement of a certain class of traffic because it is unattractive to carriers."

135.—Discriminations Between Competitive Commodities.

For a recent case involving a discrimination between grain and grain products, see *Jennison Co. v. Great Northern R. Co.*¹⁸

(17) 15 I. C. C. Rep. 370, 373, (815).

See also *infra*, §277.

(18) 18 I. C. C. Rep. 113, (1190).

CHAPTER XII.

DISCRIMINATIONS AND PREFERENCES—DISCRIMINATIONS BETWEEN INDIVIDUALS DISTINGUISHED FROM PREFERENCES AMONG LOCALITIES.

The amendment of 1910, while leaving Sections 2 and 3 as originally passed, made several very important changes in Section 4. The most essential of these was to strike out the words "under substantially similar circumstances and conditions." The effect of this amendment is to make competition no longer a justification for a long and short haul rate unless, on application to the commission, its approval be obtained. The amendment also provides that no rates lawfully existing at the time of the passage of the amendment (June 18th, 1910) shall be required to be changed by reason of the provisions of this section prior to December 18th, 1910, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until the determination of such application by the commission.

The amendment also provides that whenever a carrier by railroad shall, in competition with a water route or routes, reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

In view of this amendment the distinction between the use of the words "under substantially similar circumstances and conditions" as used in Sections 2 and 4 is, of course, obsolete. The main distinction discussed in Chapter XII, however,—that between discriminations between individuals and preferences among localities,—is still sound, except only as regards long and short haul rates. The rule may now be stated as follows:

Preferences among localities other than long and short haul rates are justified both by differences in cost of service and by compelling competition; discriminations between individuals are justified only by differences in cost of service; a greater charge

for a less distance is justified only by the approval of the commission.

It is interesting to note that this is precisely the conclusion which would have been reached by following the English decisions and statutes discussed in note (5), p. 229.

CHAPTER XIII.

DISCRIMINATIONS AND PREFERENCES—DISCRIMINATIONS BETWEEN INDIVIDUALS BY DIRECT DIFFERENCES IN CHARGES.

149.—Cost of Service the Test of Justice of Discriminations Between Individuals.

The commission will not sanction special rates based on the annual tonnage furnished by a particular shipper.¹ It has also refused to require the carriers to put in force carload rates less than the any-quantity rate,² but has several times required the allowance of mixed carloads.³

As regards the legality of lower rates on shipments of ten or more carloads at one time, see *Cartsens Co. v. Oregon Short Line R. Co.*⁴

152.—Same Subject—Carload Rates to Forwarding Agents—*Lundquist v. Grand Trunk Western R. Co.*

The decisions by the commission in *California Com. As. v. Wells Fargo & Co.*⁵ and *Export Shipping Co. v. Wabash R. Co.*,⁶ have been reversed by the Circuit Court and the opinion of the minority of the commission followed, holding that carriers are justified in refusing carload rates to forwarding agents.⁷

(1) *Hitchman Co. v. Baltimore & O. R. Co.*, 16 I. C. C. Rep. 515, 517, (1006).

(2) *Duncan v. Nashville, C. & St. L. R. Co.*, 16 I. C. C. Rep. 590, 595, (1025).

Cf. *Bentley v. Lake Shore & M. S. R. Co.*, 17 I. C. C. Rep. 56, (1041).

(3) *Florida Assn. v. Atlantic Coast Line R. Co.*, 17 I. C. C. Rep. 552, 567, (710-B).

Rotsted Co. v. Chicago & N. W. R. Co., 18 I. C. C. Rep. 257, (1240).

Chatfield Co. v. Louisville & N. R. Co., 18 I. C. C. Rep. 385, (1273).

(4) 17 I. C. C. Rep. 324, 328, (1105).

(5) 14 I. C. C. Rep. 422, (706).

(6) 14 I. C. C. Rep. 437, (707).

(7) *Delaware, L. & W. R. Co. v. Interstate Commerce Commission*, 166 Fed. 499, (707-B).

An appeal in this case is now pending before the Supreme Court.

Cf. also *California Com. Ex. v. Wells Fargo & Co.*, 16 I. C. C. Rep. 458, (991).

Admin. Rul. No. 97, (Oct. 12th, 1908).

156. Instances of Rate Discriminations Between Individuals.

Carriers may not allow to one another preferential rates.⁸

The commission has held that an express company may not properly charge more for packages sent collect than for those on which charges are prepaid.⁹

It is not unlawful for a carrier to transport the personal baggage of passengers without extra charge.¹⁰

As regards special rates to intending settlers, see *Porter v. St. Louis & S. F. Ry. Co.*¹¹ and *Place v. Toledo, P. & W. R. Co.*¹²

As regards discrimination in rates between different societies, see *Weber Club v. Oregon Short Line R. Co.*¹³

The Conference Ruling of October 12th, 1908, referred to on p. 249, has been affirmed by the commission.¹⁴

As regards permissible classification of telegraph, telephone and cable messages, see Par. 3, Section 1 as amended in 1910.¹⁵

158. Same Subject—Cases Under Section 22.

In *Re Passes to Clergymen and Persons Engaged in Charitable Work*,¹⁶ the commission held that the words "charitable" and "eleemosynary" should be given a liberal construction, and that a clergyman does not lose his ministerial standing by reason of the fact that he leaves his pastorate for some other field of religious work. The commission there said (p. 46):

(8) *Re Contracts with Express Companies*, 16 I. C. C. Rep. 246, 250, (926).

Hitchman Co. v. Baltimore & O. R. Co., 16 I. C. C. Rep. 512, 516-517, (1006).

(9) *Boise Club v. Adams Express Co.*, 17 I. C. C. Rep. 115, (1050). Cf. also Admin. Rul. No. 160, (April 6th, 1909).

(10) *Herbeck Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 88, (1045).

(11) 15 I. C. C. Rep. 1, (731).

(12) 15 I. C. C. Rep. 543, (846).

(13) 17 I. C. C. Rep. 212, (1077).

(14) *Re Tickets to School Children*, 17 I. C. C. Rep. 144, (1055).

(15) *Supra*, p. 4.

(16) 15 I. C. C. Rep. 45, (743).

"A charitable institution is one which is administered in the public interest, and in which the element of private gain is wanting. * * * Such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain."

Although carriers may make lower rates on property transported for the United States, they are not bound to do so, and contractors doing work for the government may not be given special rates.¹⁷

The issuance of mileage tickets is in the nature of a privilege to passengers, which the carrier may withhold altogether or to which it may attach conditions or restrictions at its pleasure, so long as no undue discrimination or other violation of the act is involved.¹⁸

The commission has said that since the act authorizes discrimination in permitting the issuance of excursion tickets, it will interfere in such cases only where the privilege is plainly abused by the carriers.¹⁹

The reduced-rate transportation for municipal governments permitted under Section 22 does not apply to municipal governments in adjacent foreign countries.²⁰

159. Same Subject—Who May Lawfully Receive Free Passes.

The commission has made a ruling with regard to express companies²¹ similar to that in *Re Railroad & Telegraph Companies*, cited in note (53), p. 251.

(17) *Metropolitan Brick Co. v. Ann Arbor R. Co.*, 17 I. C. C. Rep. 197, 204, (1074).

(18) *Eschner v. Pennsylvania R. Co.*, 18 I. C. C. Rep. 60, (1177).

(19) *Weber Club v. Oregon Short Line R. Co.*, 17 I. C. C. Rep. 212, 216, (1077).

(20) Admin. Rul. No. 118, (Nov. 13th, 1908).

(21) *Re Contracts of Express Companies*, 16 I. C. C. Rep. 246, 250, (926).

See also Admin. Rul. No. 161, (April 12th, 1909).

Carriers must pay tariff rates for transportation except as specifically provided by the act. They may not give one another special rates on fuel coal or other commodities.²²

The decision in *United States v. Wells Fargo Exp. Co.*, cited in note (59), p. 252, has been affirmed by the Supreme Court.²³

The amendment of 1910 inserted the following proviso in the 5th paragraph of Section 1:

"That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this act."

This amendment also included "milk" among the articles for which caretakers might be allowed free transportation.

Special rates may not be given for deportation of Chinese, though paid by the Government.²⁴

Specimens of ore for exhibition²⁵ or articles for exhibition at a public museum²⁷ may be given reduced rates under Section 22, though admission be charged on certain days.

Under Section 22, free or reduced-rate transportation may be allowed to necessary caretakers for any of the persons or property to which, by the same section, free or reduced-rate transportation is permissible.²⁸

(22) *Re Contracts of Express Companies*, 16 I. C. C. Rep. 246, 250, (926).

Hitchman Co. v. Baltimore & O. R. Co., 16 I. C. C. Rep. 512, 516-517, (1006).

Admin. Rul. No. 225, (Nov. 13th, 1908).

Admin. Rul. No. 153, (April 5th, 1909).

(23) *American Exp. Co. et al. v. United States*, 212 U. S. 522, (636-B).

See also Admin. Rul. No. 157, (April 6th, 1909).

(24) Admin. Rul. No. 107, (Nov. 10th, 1908).

(26) Admin. Rul. No. 176, (May 4th, 1909).

(27) Admin. Rul. No. 185, (June 7th, 1909.)

(28) Admin. Rul. No. 150, (Feb. 11th, 1909).

Caretakers for bees in hives may properly be given free transportation,²⁹ but a shipper or his agent may not be allowed free transportation to inspect the reicing of cars containing perishable freight.³⁰

A delivering carrier cannot return free by its own direct line a caretaker who has comes by another road in connection with the delivering carrier.³¹

As to tariffs providing for transportation of caretakers in passenger cars, see Administrative Ruling No. 179 (May 10th, 1909).

A receiver of a railroad and his employees occupy the same position as to passes as do its usual officers and agents.³²

Water lines who have become subject to the act by uniting with rail carriers under a common control, etc., may interchange free transportation for their officers, agents and employees.³³

Persons taking measurements for uniforms for a carrier's employees may be transported free while actually engaged in this duty;³⁴ but employees of a carlighting company engaged in testing the lights on trains, may not.³⁵

A *bona fide* ex-employee of a carrier, travelling for the purpose of entering its service, may properly be given a pass,³⁶ and so may his family travelling with him;³⁷ but a carrier cannot be required to return free the household goods of an employee from the point where he had been discharged to the point from which the carrier had originally hauled his goods free of charge.³⁸

The provision permitting the free transportation of the families

(29) Admin. Rul. No. 112, (Nov. 12th, 1908).

(30) Admin. Rul. No. 171, (May 4th, 1909).

(31) Admin. Rul. No. 189, (June 14th, 1909).

(32) Admin. Rul. No. 165, (April 12th, 1909).

(33) Admin. Rul. No. 196, (June 14th, 1909).

(34) Admin. Rul. No. 134, (Jan. 7th, 1909).

(35) Admin. Rul. No. 169, (April 13th, 1909).
Cf. also Admin. Rul. No. 124, (Dec. 7th, 1908).

(36) Admin. Rul. No. 102, (Oct. 13th, 1908).

(37) Admin. Rul. No. 158, (April 6th, 1909).

(38) Admin. Rul. No. 109, (Nov. 10th, 1908).

of employees killed in the service of common carriers did not cover the case of an employee who died a natural death,³⁹ but the act was amended in 1910 to include the widows and minor children of employees dying in the service of the carrier.⁴⁰

The remains of the dead wife of an employee may be transported free to a permanent burial place from a place of temporary interment.⁴¹

(39) Admin. Rul. No. 103, (Oct. 16th, 1908).
But see Admin. Rul. No. 193, (June 14th, 1909).
See also Admin. Rul. No. 173, (May 4th, 1909).

(40) See paragraph 5, of Section 1, *supra*, p. 6.

(41) Admin. Rul. No. 174, (May 4th, 1909).

CHAPTER XIV.

DISCRIMINATIONS AND PREFERENCES—DISCRIMINATIONS BETWEEN INDIVIDUALS IN RESPECT TO CHARGES, BY REBATES AND OTHER DEVICES.

161. Mere Refunding of Charges not Improper.

As regards delay in refunding overcharges, see also *Tyson Co. v. Aberdeen & A. R. Co.*¹

162. Instances of Illegal Devices—Payments to Shippers on Account of Alleged Services Rendered the Carrier.

The cases involving the legality of the allowances to Peavey & Company for elevation at Omaha are reviewed in *Nebraska-Iowa Grain Co. v. Union Pacific R. Co.*,² where the commission awarded to Omaha grain dealers owning elevators, an allowance similar to that sanctioned by its decisions between June 27th, 1906, and June 29th, 1908. Subsequently the order of the commission in *Re Allowances to Elevators*,³ requiring the carriers to cease the allowances to Peavey, was set aside by the Circuit Court, and the carriers were directed to pay Peavey & Co. his arrears.⁴ The question is now before the Supreme Court and until there decided the commission has adhered to its first ruling.⁵

After the order awarding damages in the Nebraska-Iowa case was issued, the case was tried before the Circuit Court for the eastern district of Nebraska and a verdict rendered for the plaintiffs, both on account of non-payment of the allowance on foreign cars (under the 48-hour rule) and on Union Pacific cars returned after the 48-hour period. On appeal, the judgment was

(1) 17 I. C. C. Rep. 330, (1107).

(2) 15 I. C. C. Rep. 90, 92-93, (351-C).

(3) 14 I. C. C. Rep. 315, (351-B).

See also *Brook Co. v. Missouri P. R. Co.*, 17 I. C. C. Rep. 158, (1058).

(4) *Peavey v. Union Pacific R. Co.*, 176 Fed. 409, (351-D).

(5) See *Gund v. Chicago, B. & Q. R. Co.*, 18 I. C. C. Rep. 364, 369, (1265).

sustained as to the foreign cars, but reversed as to the Union Pacific cars.⁶

The fact that from the performance of a transportation service for the carrier a shipper secures valuable trade advantages connected with transportation, does not preclude him from receiving reasonable and just compensation for such transportation service.⁷

A carrier allowing free lighterage may hire a company to perform this service even though such company is largely owned by a shipper, provided the amount paid is reasonable.⁸ Carriers may also pay reasonable compensation for switching or compression to a company the majority of the stock of which is owned by shippers.⁹

164. Same Subject—Divisions of Through Rates to Railroad Companies Controlled by Shippers.

In *Star Grain Co. v. Atchison, T. & S. F. Ry. Co.*,¹⁰ the commission held that it would not recognize a tap line as a common carrier entitled to allowances or divisions of through rates, where such carrier did not comply with the law with regard to filing rates, etc., and further, that "any allowance or division made to or with a tap line that is owned or controlled, directly or indirectly, by the lumber mill or by its officers or proprietors and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates."

(6) *Union Pacific R. Co. v. Updike Grain Co.*, 178 Fed. 223, (351-E).

(7) *Peavey & Co. v. Union Pac. R. Co.*, 176 Fed. 409, (351-D).

(8) *Federal Sugar Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 40, (1039).

(9) *Merchants Cotton Pr. Co. v. Illinois Central R. Co.*, 17 I. C. C. Rep. 98, (1048).

Cf. also *Crane Iron Works v. Central Railroad Co. of N. J.*, 17 I. C. C. Rep. 514, (1147).

Admin. Rul. No. 124, (Dec. 7th, 1908).

(10) 17 I. C. C. Rep. 338, (703-B).

See also *Taenzer v. Chicago, R. I. & P. R. Co.*, 170 Fed. 240, (1909).

Industrial Lumber Co. v. St. Louis, W. & G. R. Co., 19 I. C. C. Rep. 50, (1344).

As to the last point, Commissioner Prouty's dissenting opinion would appear to contain the more satisfactory reasoning.

The decision of the majority was approved in a later case in which, however, the point was not expressly decided.¹¹

165. Same Subject—Rates Ostensibly Open to all but in Reality Restricted to a Favored Few.

To note (28), p. 260 add:—

Nebraska-Iowa Gr. Co. v. Union Pacific R. Co.¹²

167. Same Subject—Compromise of Debt by Allowances on Transportation Charges.

To note (35), pp. 262-263 add:—

Chesapeake & O. R. Co. v. Standard Lumber Co.¹³

168. Same Subject—Miscellaneous "Devices."

To note (36), p. 263 add:—

Cf. Brook Co. v. Missouri P. R. Co.¹⁴

An agreement whereby a tie hoist, erected by a shipper for his exclusive use, was to be paid for by the carrier by credits on freight, was held to be an illegal device to give a preference.¹⁵

Several recent cases have involved the question of estimated weights.¹⁶

(11) Fathauer & Co. v. St. Louis, I. M. & S. R. Co., 18 I. C. C. Rep. 517, 520-521, (1302).

(12) 15 I. C. C. Rep. 90, 96, (351-C).

(13) 174 Fed. 107, 115, (1061).

(14) 17 I. C. C. Rep. 158, (1058).

(15) Chesapeake & O. R. Co. v. Standard Lumber Co., 174 Fed. 107, 115, (1061).

(16) Duluth Log Co. v. Chicago, M. & St. P. Ry. Co., 16 I. C. C. Rep. 38, (881).

Ozark Assn. v. St. Louis & S. F. R. Co., 16 I. C. C. Rep. 134, 136, (901).

Davies v. Illinois C. R. Co., 16 I. C. C. Rep. 376, (961).

CHAPTER XV.

DISCRIMINATIONS AND PREFERENCES—DISCRIMINATIONS BETWEEN INDIVIDUALS IN RESPECT TO TRANSPORTATION MATTERS OTHER THAN CHARGES PROPER.

169. In General—Burden of Proof.

In reversing the decision of the Circuit Court of Appeals in the Pitcairn case, cited in note (1), p. 266, the Supreme Court did not pass on the question of the burden of proof,¹ nor was the point decided in another decision, presenting similar facts, rendered on the same day.²

170. Car Distribution.

A provision suspending demurrage during a period when cars are "bunched" would seem to be reasonable.³

A carrier is not bound to provide sufficient facilities to meet the special needs of a particular shipper under abnormal conditions.⁴

171. Same Subject—How far Carriers May Regard Their Own Interest and Convenience in Distributing Cars.

The different methods of rating mines and distributing coal cars have been discussed by the Supreme Court in two important cases recently decided.⁵

(1) Baltimore & O. R. Co. v. United States ex rel. Pitcairn Coal Co., 215 U. S. 481, (495-C).

(2) Interstate Commerce Commission v. Illinois Central R. Co., 215 U. S. 452, 471, (631-C).

(3) American Co. v. Illinois Central R. Co., 15 I. C. C. Rep. 160, 164, (766).

(4) Reiter v. New York S. & W. R. Co., 19 I. C. C. Rep. 290, (1375).

(5) Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, (631-C).

Baltimore & O. R. Co. v. United States ex rel. Pitcairn Coal Co., 215 U. S. 481, (495-C).

See also Hillsdale Co. v. Penna. R. Co., 19 I. C. C. Rep. 356, (1383).

172. Methods of Distributing Cars for Coal.

The commission has again refused to compel carriers to rate mines solely on the basis of physical capacity and has approved a method by which physical and commercial capacity were given equal importance.⁶

174. Same Subject—Cars for Company Coal.

The decision of the Circuit Court of Appeals in *Chicago & A. R. Co. v. Interstate Commerce Commission* ⁷ was reversed by the Supreme Court, holding that, in the distribution of equipment, cars for company fuel coal must be counted as part of the share of the mine receiving them,⁸ and that such cars should also be taken into account in determining the ratings of the mines in the first instance.⁹ The court also held that, under the facts presented, and in view of the findings by the commission, the carrier's contention that certain of the cars were hopper cars of a peculiar design not adapted to the needs or use of the public in general, did not alter the situation.¹⁰

177. Individual Cars.

See also *Hillsdale Co. v. Penna. R. Co.*¹¹

179. Miscellaneous Matters.

In *Gamble-Robinson Co. v. Chicago & N. W. R. Co.*,¹² the Circuit Court of Appeals for the 8th circuit held, sustaining the de-

(6) *Hillsdale Co. v. Penna. R. Co.*, 19 I. C. C. Rep. 356, (1383).

(7) 173 Fed. 930, (631-B).

(8) *Interstate Commerce Commission v. Illinois C. R. Co.*, 215 U. S. 452, (631-C).

Interstate Commerce Commission v. Illinois C. R. Co. (No. 2), 215 U. S. 479, (631-D).

Hillsdale Co. v. Penna. R. Co., 19 I. C. C. Rep. 356, (1383).

(9) *Interstate Commerce Commission v. Illinois C. R. Co.*, 215 U. S. 452, 473-474, (631-C).

(10) *Interstate Commerce Commission v. Illinois C. R. Co.* (No. 2), 215 U. S. 479. (631-D).

(11) 19 I. C. C. Rep. 356, (1383).

(12) 168 Fed. 161, (852).

murrer to the complaint, that it was not an undue preference for defendant to refuse complainant's shipments unless charges were prepaid, while allowing other shippers, similarly situated, to ship without prepaying freight, even though defendants' course of action was adopted expressly to harass complainant and to injure his business, and though it in fact had that effect. It would seem that the demurrer was properly sustainable on the ground that the commission's jurisdiction over such cases was exclusive,¹³ but this point was not referred to or passed on by the court. On the question of undue preference, Judge Hook's dissenting opinion appears to be unanswerable.

The commission has held that the circumstances and conditions surrounding the liquor traffic differ so materially from those involved in the transportation of other commodities as to warrant an express company in refusing to accept C. O. D. shipments of liquor although still receiving other commodities on this basis.¹⁴

It has been held to be an unjust discrimination to refuse to different shippers the same station facilities.¹⁵

To note (58), p. 278 add:—

See also *Douglas v. Chicago, R. I. & P. Ry. Co.*¹⁶

To note (65), p. 279 add:—

See also *Cozart v. Southern Ry. Co.*¹⁷

*Gaines v. Seaboard Air Line Ry.*¹⁸

(13) See *Baltimore & O. R. Co. v. United States ex rel. Pitcairn Coal Co.*, 215 U. S. 481, (495-C).

(14) *Royal Brg. Co. v. Adams Exp. Co.*, 15 I. C. C. Rep. 255, (794).

(15) *Enterprise Co. v. Pennsylvania R. Co.*, 16 I. C. C. Rep. 219, 225, (923).

See also *Joynes v. Pennsylvania R. Co.*, 17 I. C. C. Rep. 361, (1112).

(16) 16 I. C. C. Rep. 232, 244, (925).

(17) 16 I. C. C. Rep. 226, (924).

(18) 16 I. C. C. Rep. 471, (993).

CHAPTER XVI.

DISCRIMINATIONS AND PREFERENCES—PREFERENCES AMONG LOCALITIES.

The conclusions reached and the authority of the decisions cited in the text of this chapter are, of course, greatly modified by the amendment to Section 4 of the act, introduced in 1910. This amendment struck out from the long and short haul clause the words "under substantially similar circumstances and conditions."¹

The effect of this amendment is to make competition in itself no longer necessarily a justification of a greater charge for a shorter distance; a rate so constructed can now be justified only by receiving the sanction of the commission.² As regards all cases of preferences among localities not involving a greater charge for the shorter distance, the decisions cited in Chapter XVII are still in force. Compelling competition, whether by water, by rail, or between different markets, still justifies a carrier in creating a seeming preference in rates in favor of the competitive locality and a preference so resulting is not "undue" within the meaning of Section 3 of the act. No species of competition, however, any longer justifies a greater charge for a less distance unless the rate relation in question be approved by the commission.

(1) Other changes were made in Section 4, not directly bearing on the matters discussed in this Chapter; see full text of changes, *supra*, p. 9.

(2) As to the legality of competitive long and short haul rates existing at the date of the passage of the Act, the Amendment added the following proviso:

"*Provided, further*, That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission."

180. Reasons for and Purpose of the Prohibition of Preferences Among Localities.

Points in the same general rate group should normally have the same rate.³

Several recent cases have presented unjustified violations of Section 4, as it stood prior to the amendment of 1910.⁴

181. Scope of the Prohibition.

The amendment of 1910 struck out of Section 4 the words "under substantially similar circumstances and conditions", thus making the long and short haul rule an absolute one, except only in cases in which the commission relieves the carrier from its operation.⁵

A case of undue preference does not arise unless both localities are served by the same carrier.⁶

182. Same Subject—Distinction Between Problem Under Sections 3, 4 and 1.

By the amendment of 1910, to Section 4, the long and short haul rule has now become not merely an instance of a preference

(3) *Kindelon v. Southern Pacific Co.*, 17 I. C. C. Rep. 251, (1084).

Dupont Co. v. Pennsylvania R. Co., 17 I. C. C. Rep. 544, (1151).

Frederick & Kempe Co. v. New York, N. H. & H. R. Co., 18 I. C. C. Rep. 481, (1290).

Cf. Penna. Smelting Co. v. Northern Pac. R. Co., 19 I. C. C. Rep. 60, (1347).

(4) *Davenport Co. v. Yazoo & M. V. R. Co.*, 16 I. C. C. Rep. 209, (919).

Heileman Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 396, (967).

Bartling Co. v. Missouri P. R. Co., 16 I. C. C. Rep. 494, (1006).

(5) See provisions, *supra*, p. 9.

(6) *Chicago Co. v. Tioga S. E. R. Co.*, 16 I. C. C. Rep. 323, 332, (942).

Friend Paper Co. v. Cleveland, C., C. & St. L. R. Co., 18 I. C. C. Rep. 178, (1211).

Cincinnati v. Cincinnati, N. O. & T. P. R. Co., 18 I. C. C. Rep. 440, 456-457, (183-F).

National Petrol. As. v. Missouri Pac. R. Co., 18 I. C. C. Rep. 593, (1235).

See, however, *Indiana St. & W. Co. v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 155, (908).

Tennessee R. Com. v. Ann Arbor R. Co., 17 I. C. C. Rep. 418, (1127).

between localities, but an absolute requirement subject to be suspended only by the commission in specific instances.

The constitutionality of this provision will doubtless be contested in the courts.

184. General Attitude of the Commission and the Courts in Treating Questions of Preferences Among Localities—Burden of Proof.

Under the act as it stood prior to 1910, it was held by the commission that a carrier, having justified the less charge for the greater distance, was not bound also to show that the rate to the shorter distance was *per se* reasonable.⁷

185. Division of a Through Rate not the Standard of What Local Rates Should be.

The division of a through rate accepted by a carrier is not a proper measure of what it should accept as a local rate between the same points,⁸ and *vice versa*.⁹

187. Same Subject—Inland Rates on Export and Import Traffic.

A subsequent decision by the commission, following the Import Rate case, is *Percy Kent Co. v. New York Central & H. R. R. Co.*¹⁰

The commission has held that the allowance of less free time on local lumber than on that for export was reasonable.¹¹

It would seem that an export rate exceeding the domestic rate is presumptively unreasonable.¹²

(7) *Moise v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 550, 553, (1013).

(8) *Moise v. Chicago, R. I. & P. R. Co.*, 16 I. C. C. Rep. 550, 554, (1013), and cases cited.

Jennison Co. v. Great Northern R. Co., 18 I. C. C. Rep. 113, 119, (1189).

(9) *Copper Queen Co. v. Baltimore & O. R. Co.*, 18 I. C. C. Rep. 154, (1204).

(10) 15 I. C. C. Rep. 439, (824).

(11) *New Orleans Bd. of Tr. v. Illinois Central R. Co.*, 17 I. C. C. Rep. 496, (1141).

(12) *Newark Co. v. Pittsburgh, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 291, (932).

In *Bayou City Rice Mills v. Texas & N. O. R. Co.*,¹³ the commission apparently adhered to its opinion that a carrier might not lawfully make lower rates from a given point dependent on the freight having come to such a point by wagon or similar conveyance not subject to the act. This case would seem to be in conflict with the *Import Rate* case,¹⁴ and also with an earlier decision by the commission.¹⁵

188. Legality of Proportional and Reconsignment Rates—Proportional Rates.

As regards the legality of proportional rates, rates providing for milling in transit, etc., see recent cases *supra*, Sections 45 and 47.

189. Same Subject—Reconsignment Rates.

For a full discussion of various practices in connection with transit privileges, see *In Re Substitution of Tonnage at Transit Points*.¹⁶

The commission has ruled that no transit privilege should extend beyond one year.¹⁷

Substitution of tonnage in connection with reconsignment rates is not permissible,¹⁸ nor is it proper to forward the remainder of a carload at the carload rate after removal of part.¹⁹

(13) 18 I. C. C. Rep. 490, 493, (1292).

See also Admin. Rul. No. 164, (April 12th, 1909).

(14) *Texas & Pac. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, (122-D).

(15) *Kent Co. v. New York Cent. & H. R. R. Co.*, 15 I. C. C. Rep. 439, (824).

(16) 18 I. C. C. Rep. 280, (1253).

See also *Henderson v. St. Louis, I. M. & S. R. Co.*, 18 I. C. C. Rep. 514, (1301).

Stott v. Michigan Cent. R. Co., 18 I. C. C. Rep. 582, (1322).

Admin. Rul. No. 203, (June 29th, 1909).

(17) Admin. Rul. No. 204, (June 29th, 1909).

(18) *Rodehaver v. Missouri, K. & T. R. Co.*, 16 I. C. C. Rep. 146, (905).

Bath Co. v. Missouri, K. & T. R. Co., 18 I. C. C. Rep. 522, 523, (1303).

Admin. Rul. No. 181, (June 7th, 1909).

Admin. Rul. No. 204, (June 24th, 1909).

(19) *Aeme Co. v. Chicago & A. R. Co.*, 17 I. C. C. Rep. 220, 222, (1079).

In *Anderson v. St. Louis & S. F. R. Co.*,²⁰ Commissioner Lane said:

"Transit privileges are allowed upon the theory that the inbound shipment may be stopped and the identical freight, or its product, or its exact equivalent of the same commodity moving into the transit point under the same privilege, may be shipped to ultimate destination under the through rate from point of origin."

A regulation under which grain might be reconsigned at any time within six months of its receipt on exhibition of expense bills has been held illegal, since the grain sent out was not in any sense identical with that shipped in.²¹

As to reconsignment of refused shipments, see Administrative Ruling No. 114 (Nov. 12th, 1908).

191. Undue Preferences Between Localities Not Confined to Rates but Include Facilities.

The imposition of unequal demurrage charges or regulations at two points similarly situated is illegal,²² and the same is true as to terminal charges,²³ elevation allowances,²⁴ milling in transit privileges,²⁵ minimum carload regulations,²⁶ reconsignment²⁷ or switching²⁸ charges.

(20) 17 I. C. C. Rep. 12, (1033).

See also *Henderson v. St. Louis, I. M. & S. R. Co.*, 18 I. C. C. Rep. 514, (1301).

(21) *Duncan v. Nashville, C. & St. L. R. Co.*, 16 I. C. C. Rep. 590, 599, (1025).

(22) *Lynah v. Baltimore & O. R. Co.*, 18 I. C. C. Rep. 38, 47, (1172).

(23) *Los Angeles v. Atchison, T. & S. F. Ry. Co.*, 18 I. C. C. Rep. 310, (1257).

(24) *Duncan v. Nashville, C. & St. L. R. Co.*, 16 I. C. C. Rep. 590, (1025).

(25) *Henderson Co. v. Illinois Central R. Co.*, 17 I. C. C. Rep. 573, (1155).

(26) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 254, 256-261, (927).

(27) *Sondheimer v. Illinois Central R. Co.*, 17 I. C. C. Rep. 60, (1042).

(28) *Minneapolis Co. v. Chicago, St. P., M. & O. R. Co.*, 17 I. C. C. Rep. 189, (1071).

Under stress of competition, however, free cartage may be furnished at a large town though denied at a smaller one,²⁹ and a carrier allowing free lighterage at points near its terminus is not thereby bound to extend such service to more distant points.³⁰ Similarly, it has been held that ten days' free time for export lumber at New Orleans was not improper because but two days was allowed on lumber for local consumption.³¹ It has also been held that there may properly be different loading and unloading regulations at different points under different circumstances and conditions.³²

As to preference in distributing express packages to different parts of a city, see *Strauss v. Adams Exp. Co.*³³

(29) *Phillips v. New York & B. D. Exp. Co.*, 15 I. C. C. Rep. 631, 635, (857).

(30) *Federal Sugar Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 40, 46, (1039).

(31) *New Orleans Bd. of Tr. v. Illinois Central R. Co.*, 17 I. C. C. Rep. 496, (1141).

Cf. *Brey v. Pennsylvania R. Co.*, 16 I. C. C. Rep. 497, (1001).

(32) *Wholesale Assn. v. Atchison, T. & S. F. Ry. Co.*, 17 I. C. C. Rep. 596, 602, (705-B).

(33) 19 I. C. C. Rep. 112, (1358).

CHAPTER XVII.

DISCRIMINATIONS AND PREFERENCES—CIRCUMSTANCES JUSTIFYING PREFERENCES AMONG LOCALITIES—COMPETITION.

193. Competition by Water-Lines and by Intra-State or Foreign Railroads.

In *Bulte Co. v. Chicago & A. R. Co.*,¹ Commissioner Harlan said:

"A railroad can not be permitted to trifle with the interests of the shippers of one locality by setting up an imaginary water competition as an excuse for making lower rates for another locality that ought on other grounds to be on a parity of rates. But where a well-sustained water competition exists that takes a substantial percentage of the tonnage offered, and could readily prepare to take it all, if left in undisturbed control of the traffic, we know of no reason why the rail line may not meet the competition without subjecting itself to charges of discrimination from other quarters. There is no principle of law that requires it to be content with half the traffic or that forbids it to adjust its rates so as to

(1) 15 I. C. C. Rep. 351, 359-360, (813).

See also *Spokane v. Northern Pacific R. Co.*, 15 I. C. C. Rep. 376, 388-389, (816).

Monroe Fr. L. v. St. Louis, I. M. & S. R. Co., 15 I. C. C. Rep. 534, (845).

Indianapolis Fr. Bur. v. Pennsylvania R. Co., 15 I. C. C. Rep. 567, 576, (850).

Bainbridge Board of Trade v. Louisville, H. & St. L. R. Co., 15 I. C. C. Rep. 586, (854).

Lindsay v. Baltimore & O. S. W. R. Co., 16 I. C. C. Rep. 6, (871).

Planters Co. v. Yazoo & M. V. R. Co., 16 I. C. C. Rep. 131, (900).

Indianapolis Fr. Bur. v. Cleveland, C. C. & St. L. R. Co., 16 I. C. C. Rep. 276, (928).

Rogers v. Oregon R. & N. Co., 16 I. C. C. Rep. 424, (976).

Bayou City Mills v. Texas & N. O. R. Co., 18 I. C. C. Rep. 490, (1292).

Columbia Groc. Co. v. Louisville & N. R. Co., 18 I. C. C. Rep. 502, (1297).

These decisions were all rendered prior to the Amendment of 1910, and as regards any question of long and short haul rates are, of course, no longer authorities.

fight for the whole tonnage the moment it really feels the effect and influence of its competitor's rates."

The amendment of 1910, in addition to striking out from Section 4 the words "under substantially similar circumstances and conditions" added to the section the following paragraph:

"Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

198. Same Subject—Commission Decisions Between the Alabama Midland and East Tennessee, Va. & Ga. R. Co. Cases.

Prior to the amendment of 1910, the commission in a number of decisions recognized competition between carriers subject to the act as a valid justification for preferences among localities or for greater charges for less distances.² Since the amendment, these decisions are of course no longer authority as regards long and short haul rates.³

200. Same Subject—Early Decisions—The Behlmer Case.

The same is also true of market competition.⁴

For a discussion of the decision by the commission in *St.*

- (2) *Pilant v. Atchison, T. & S. F. Ry. Co.*, 15 I. C. C. Rep. 178, (774).
Macgillis v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 329, (809).
Hattiesburg v. Alabama G. So. R. Co., 16 I. C. C. Rep. 534, (1011).
Morse v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 550, (1013).
Southern Co. v. Illinois Central R. Co., 17 I. C. C. Rep. 300, (1096).
Ocean Co. v. Central R. Co. of N. J., 17 I. C. C. Rep. 383, (1116).
Foster Co. v. Gulf, C. & S. F. R. Co., 17 I. C. C. Rep. 385, (1117).
Montgomery Fr. Bur. v. Louisville & N. R. Co., 17 I. C. C. Rep. 521, (1148).

Such competition may affect some articles and not others,

- La Salle Co. v. Michigan Central R. Co.*, 16 I. C. C. Rep. 149, (906).

(3) See *supra*, p. 145.

- (4) See *Bristol v. Southern Ry. Co.*, 15 I. C. C. Rep. 487, (837).
Hellstrom v. Northern Pacific R. Co., 17 I. C. C. Rep. 580, (1158).

Louis Tr. Bur. v. Chicago, B. & Q. R. Co.,⁵ cited in note (38), p. 309, see Nebraska-Iowa Gr. Co. v. Union Pacific R. Co.⁶

202. Qualifications of the Effect of Competition.

In order to justify a preference between localities the competition relied on must be actual and effective,⁷ and the difference in rates may not be greater than the competition necessitates.⁸ In *Sondheimer v. Illinois Central R. Co.*,⁹ Chairman Knapp said:

"It is also well settled that dissimilarity of circumstances and conditions may justify a discrimination which is not undue. That is to say, any discrimination which exists must not exceed that which is warranted by the difference in circumstances and conditions."

Carriers are not bound, however, to meet the rates of short line competitors,¹⁰ or those of water lines.¹¹

205. Same Subject—Rate to Competitive Point May not be Less Than the Cost of Transportation.

Carriers may not properly charge rates to competitive points less than the actual cost of transportation and recoup the loss thus sustained by unreasonable rates to non-competitive localities.¹²

(5) 14 I. C. C. Rep. 317, (698).

See also *Peavey v. Union Pacific R. Co.*, 176 Fed. 409, 425-426, (351-D), and *Union Pac. R. Co. v. Updike Grain Co.*, 178 Fed. 223, (351-E).

(6) 15 I. C. C. Rep. 90, 93, (351-C).

(7) *Hinton Co. v. Chesapeake & O. R. Co.*, 17 I. C. C. Rep. 578, (1157).

(8) *Planters Co. v. Yazoo & M. V. R. Co.*, 16 I. C. C. Rep. 131, (900).

(9) 17 I. C. C. Rep. 60, 64, (1042).

See also *Monroe Pr. L. v. St. Louis, I. M. & S. R. Co.*, 15 I. C. C. Rep. 534, 539, (845).

(10) *Commercial Coal Co. v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 11, 14, (734).

Menefee Co. v. Texas & Pac. R. Co., 15 I. C. C. Rep. 49, (745).

Palmer v. Lake E. & W. R. Co., 15 I. C. C. Rep. 107, (755).

Swift & Co. v. Chicago & A. R. Co., 16 I. C. C. Rep. 426, 429, (978).

Colorado Co. v. Chicago, B. & Q. R. Co., 18 I. C. C. Rep. 403, 404, (1278).

(11) *Darling v. Baltimore & O. R. Co.*, 15 I. C. C. Rep. 79, 87, (754).

(12) See *Hellstrom v. Northern Pac. R. Co.*, 17 I. C. C. Rep. 580, (1158).

CHAPTER XVIII.

FACILITIES FOR THE INTERCHANGE OF TRAFFIC AND DISCRIMINATIONS BETWEEN CONNECTING LINES.

Since the text was published there have been no decisions, either by the courts or by the commission, on the questions discussed in Chapter XVIII. The only language of the amendment of 1910 which might have a bearing on the rights of competing lines to equal treatment by connecting carriers, is that inserted in the last sentence of paragraph 2, Section one, making it the statutory duty of carriers subject to the act to "make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used" in connection with through routes. This provision would appear, however, to have been intended primarily for the benefit of shippers and not to affect the second paragraph of Section 3.

On the whole, the passage of the amendment of 1910 after extensive consideration of the entire railroad situation, would seem to amount to an acceptance by Congress of the view of the law laid down in the majority of the Federal decisions,—that Section 3 does not require equal privileges to connecting lines in respect to through routing arrangements.

CHAPTER XIX.

PUBLICATION AND FILING OF CHARGES

229. Provisions of the Act.

The amendment of 1910 added the following four paragraphs to Section 6:

"The commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the commission shall be void and its use shall be unlawful.

"In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"If any common carrier subject to the provisions of this act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dol-

lars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: 'The Station Agent of the ——— Company at ——— Station,' together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office."

232. Form of Schedules—In General.

In *Newton Gum Co. v. Chicago, B. & Q. R. Co.*,¹ Commissioner Lane said:

"Tariffs should be framed so clearly that their meaning will be absolutely clear to members of the shipping public for whose benefit the carrier's schedules are posted."

As traffic conditions change, the tariffs should be so altered as to provide for the new conditions.²

A tariff may properly contain a provision giving shippers an option of using either class or commodity rates.³

The amendment of 1910, above quoted, gives the commission authority to reject any schedule not containing lawful notice of its effective date, such schedule to be void.

A tariff giving the carrier the option of cancelling it without

(1) 16 I. C. C. Rep. 341, 347, (948).

See also *Old Dominion Co. v. Pennsylvania R. Co.*, 17 I. C. C. Rep. 309, 315, (1101).

(2) *Davies v. Illinois C. R. Co.*, 16 I. C. C. Rep. 376, 378, (961).

(3) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 56, 70, (886).

And see *Tritch Co. v. Rutland*, 17 I. C. C. Rep. 543, (1150).

legal notice or requiring the shipper's signature to make it valid is not in compliance with the law.⁴

A tariff used prior to Aug. 28th, 1906, but not filed until thereafter, containing an effective date prior to the date of filing, takes effect thirty days after filing.⁵

As to tariffs for transportation of explosives, see Administrative Ruling No. 106 (Nov. 9th, 1908).

A note in a joint through tariff providing that passengers purchasing through tickets thereunder shall be entitled to such side-trip privileges as are stated in the individual tariffs, on file with the commission, of the carriers parties to the through fares, is sufficient compliance with the law and with the requirements of the commission.⁶

Tariff provisions, in order to comply with the law, must be definite and specific and present no alternative to the carrier either to collect or refund charges.⁷

232a. Cancellation of Tariffs.

A rate lawfully published continues to be the lawful rate until lawfully cancelled and a subsequent tariff naming other rates without cancelling the previous rates does not carry the new rates into effect, the silence of a new tariff with reference to existing rates not amounting to a cancellation thereof.⁸

As to cancellation of tariffs, see also Administrative Ruling No. 101 (Oct. 12th, 1908), and 104 (Nov. 9th, 1908).

233. Same Subject—Charges for Incidental Services and Regulations Affecting Rates.

A shipper complying with the terms of the published tariffs is

(4) *Kile v. Deepwater R. Co.*, 15 I. C. C. Rep. 235, 237, (790).

And cf. *Schultz Co. v. Southern Pacific Co.*, 18 I. C. C. Rep. 234, 237, (1231).

(5) Admin. Rul. No. 100, (Oct. 12th, 1908).

(6) Admin. Rul. No. 177, (May 10th, 1909).

(7) Admin. Rul. No. 145, (Feb. 8th, 1909).

Admin. Rul. No. 135, (Jan. 27th, 1909).

Cf. also Admin. Rul. No. 146, (Feb. 8, 1909).

(8) *New Albany Box Co. v. Illinois C. R. Co.*, 16 I. C. C. Rep. 315, (938).

See also Tar. Circ. 15-A, Rule 85.

entitled to the rates and service therein specified without being subject to further conditions.⁹ Circulars not part of the regular tariffs are not binding on shippers.¹⁰

Tariffs must specify demurrage charges¹¹ or transit privileges¹² if such are to be effective. An extra charge for loading carload freight is not collectible unless published in the proper tariff.¹³ The commission does not regard with favor, however, claims for refund of demurrage based solely on the ground that the tariffs under which they were collected were not on file.¹⁴

Where, by mistake of the carrier, freight is unloaded at the wrong depot, although the shipper might properly insist on delivery at the designated point, if he chooses to cart the freight himself, he cannot recover the cost of drayage, no such allowance being specified in the tariffs.¹⁵

Tariffs need not state scaleage deductions made by carriers in delivering grain from warehouses on account of necessary loss of weight in elevating, where it does not appear that the deductions give rise to any unjust discrimination, undue preference, or other violation of the act.¹⁶

The terminal rate, which the act requires to be published, is, for service in addition to the ordinary receipt and delivery of freight

(9) *California Com. Cl. v. Wells Fargo & Co.*, 16 I. C. C. Rep. 458, (991).

(10) *Kurtz v. Pennsylvania R. Co.*, 16 I. C. C. Rep. 410, 417, (971).
Monroe v. Michigan C. R. Co., 17 I. C. C. Rep. 27, 29, (1037).

(11) *United States v. Denver & R. G. R. Co.*, 18 I. C. C. Rep. 7, (1164).

(12) *Horst Co. v. Southern Pacific Co.*, 17 I. C. C. Rep. 576, (1156).
And cf. *Rodehaver v. Missouri, K. & T. R. Co.*, 16 I. C. C. Rep. 146, (905).

(13) *Voorhees v. Atlantic C. L. R. Co.*, 16 I. C. C. Rep. 42, (883).

(14) Admin. Rul. No. 194, (June 14th, 1909).

(15) *Crosby v. Goodrich Tr. Co.*, 17 I. C. C. Rep. 175, (1066).
See also *Barrett Co. v. C. R. of N. J.*, 17 I. C. C. Rep. 464, (1133).

(16) *Baltimore Ch. of Com. v. Pennsylvania R. Co.*, 15 I. C. C. Rep. 341, (811).

Cf. Admin. Rul. No. 107, (Nov. 10th, 1908).

at the regular depot of the carrier, and not, as under the English system, for the necessary service at such regular terminal.¹⁷

235. Export and Import Rates.

A joint through rate, with an ocean carrier, from a foreign port to a point on a railroad in the United States, is not subject to the jurisdiction of the commission.¹⁸

236. Joint Rates.

The commission has held that a minimum carload provision established by a delivering carrier is ineffectual if conflicting with that established by the initial line, the rates and regulations of the initial carrier controlling.¹⁹

A carrier filing a joint rate to a point on a connecting line is responsible therefor although the connecting line does not concur therein.²⁰

The failure by the carriers, parties to a joint through rate, to agree on the division thereof, does not affect the validity of such rate.²²

A railroad is not bound to post combination rates to points on a connecting line with which it has no joint routing agreement; it

(17) *Los Angeles v. Atchison, T. & S. F. R. Co.*, 18 I. C. C. Rep. 310, 315-316, (1257).

(18) *Borgfeldt & Co. v. Southern Pac. Co.*, 18 I. C. C. Rep. 552, (1313).

Cf. also *Humboldt S. S. Co. v. White Pass. & Y. R. Co.*, 19 I. C. C. Rep. 105, (1355).

Admin. Rul. No. 111, (Nov. 12th, 1908).

(19) *Sunderland Co. v. Missouri, K. & T. R. Co.*, 18 I. C. C. Rep. 425, (1283).

(20) *Black Horse Co. v. Illinois Central R. Co.*, 17 I. C. C. Rep. 588, 592, (1161).

See also as to the effect of non-concurrence or negative concurrence on the legality of joint tariffs,

Indiana St. & W. Co. v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 155, (908).

Voorhees v. Atlantic C. L. R. Co., 16 I. C. C. Rep. 45, (884).

(22) *Germain Co. v. New Orleans & N. E. R. Co.*, 17 I. C. C. Rep. 22, 24, (1036).

is sufficient for it to post the rates on its own road applicable to such traffic.²³

237. Change of Rates During Transit.

The decision in *Re Through Routes and Rates*,²⁴ cited in note (62) p. 353, was affirmed by the commission in a later case.²⁵

The privilege of returning rejected C. O. D. shipments at low published rates attaches to the shipments on the outward haul and cannot be cancelled by tariffs taking effect before the return of the packages.²⁶

239. What Necessary to Put Rates Legally in Force.

With decisions cited in note (68) p. 354, compare:

*United States v. Standard Oil Co.*²⁷

240. Effect of Filing Rates—Reasonableness of Tariff Charges can be Raised Only Before the Commission.

In *Woodward v. Louisville & N. R. Co.*,²⁸ Commissioner Lane said:

"It is no longer strictly correct to speak of the contract of shipment and the bill of lading as evidencing the terms of such contract, for under a governmental-prescribed system of publishing rates a carrier is not free to contract with respect to the rate, but is required by law to perform a service for the public under the tariffs of charges and regulations, which,

(23) *Canadian Valley Co. v. Chicago, R. I. & P. R. Co.*, 18 I. C. C. Rep. 509, (1299).

(24) 12 I. C. C. Rep. 163, (489).

(25) *Re Milling-in-Transit*, 17 I. C. C. Rep. 113, (1049).

See also Admin. Rul. No. 119, (Nov. 13th, 1908).

Admin. Rul. No. 172, (May 4th, 1909).

Admin. Rul. No. 178, (May 10th, 1909).

Admin. Rul. No. 136, (Jan. 27th, 1909).

Cf. however, *Borgfeldt & Co. v. Southern Pac. Co.*, 18 I. C. C. Rep. 552, (1313).

Admin. Rul. No. 111, (Nov. 12th, 1908).

(26) *Interstate Remedy Co. v. American Exp. Co.*, 16 I. C. C. Rep. 436, (982).

(27) 170 Fed. 988, 1008, (530-C).

(28) 15 I. C. C. Rep. 170, 173, (771-A).

though furnished by it, are legally enforceable, not by reason of any contract, but by virtue of the legal prescription."

Where the carrier charges the rates and accords the service specified in its regularly published tariffs, the courts have no jurisdiction to award damages to a shipper on the ground that such rates or regulations are unreasonable;²⁹ where, however, the question involved is not the reasonableness of a tariff provision, but its meaning, the court's jurisdiction is not affected.³⁰

The commission has power to award damages for excessive charges, even though these were made in accordance with tariffs filed,³¹ but it has held that its power is limited to the award of rate damages.³²

The commission has no power to authorize a carrier to accept less than its regular published rates. The shipper must pay the tariff rate and then secure an order for reparation.³³

The filing of a tariff and its remaining on file without the commission's objection, does not make it legal.³⁴

241. Same Subject—Discrimination Cases.

Although the Circuit Court for the district of New Jersey has

(29) *Baltimore & O. R. Co. v. U. S. ex rel. Pitcairn Coal Co.*, 215 U. S. 481, (495-C).

Morrisdale Coal Co. v. Pennsylvania R. Co., 176 Fed. 748, (1152).

(30) *Central R. Co. of N. J. v. Hite*, 166 Fed. 976, (764-A).

Hite v. Central R. Co. of N. J., 171 Fed. 370, (764-B).

(31) *Washer Grain Co. v. Missouri P. R. Co.*, 15 I. C. C. Rep. 147, 155-156, (763).

Morse Co. v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 334, (546-B).

Farley v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 602, (857).

Arkansas Fuel Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 95, (892).

Kansas City Hay Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 100, (893).

Allen v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 293, (933).

(32) *Joynes v. Pennsylvania R. Co.*, 17 I. C. C. Rep. 361, (1112).
See *infra*, §280.

(33) *Males Co. v. Lehigh & H. Co.*, 17 I. C. C. Rep. 280, 282, (1088).
But see *Old Dominion Co. v. Pennsylvania R. Co.*, 17 I. C. C. Rep. 309, 311, 312, (1101).

(34) *Porter v. St. Louis & S. F. R. Co.*, 15 I. C. C. Rep. 1, 4, (731).

held that it had jurisdiction of an action for damages for discrimination notwithstanding the fact that the rates charged were those in the published tariffs,³⁵ it is believed that in view of a later decision by the Supreme Court this case is not the law. In the decision referred to the Supreme Court held, following the reasoning of the Abeline Cotton Oil case, that the courts had no jurisdiction to regulate the distribution of coal cars among the various coal mines in a given region by an order the effect of which would be to alter the method of distribution provided in the duly published tariffs of the carriers.³⁶

242. Same Subject—Can the Courts Enjoin the Filing or Enforcement of a Proposed Schedule?

Under two recent decisions by the Supreme Court, it would seem that the circuit courts have no power to enjoin the filing or enforcement of a proposed schedule of rates until the commission has passed on its reasonableness.³⁷ The fact that a violation of the Sherman act is alleged does not give the court jurisdiction.³⁸

(35) *Lyne v. Delaware, L. & W. R. Co.*, 170 Fed. 847, (769-A).

An appeal to the Circuit Court of Appeals is pending in this case.

See also *Washer Grain Co. v. Missouri P. R. Co.*, 15 I. C. C. Rep. 147, 156, (763).

American Tie Co. v. Kansas City S. R. Co., 175 Fed. 28, (1102).

(36) *Baltimore & O. R. Co. v. United States ex rel. Piteairn Coal Co.*, 215 U. S. 481, (495-C).

Morrisdale Coal Co. v. Pennsylvania R. Co., 176 Fed. 748, (1152), (but see page 762).

(37) *Baltimore & O. R. Co. v. U. S. ex rel. Piteairn Coal Co.*, 215 U. S. 481, (495-C).

Macon Groc. Co. v. Atlantic C. L. R. Co., 215 U. S. 501, 511, (712-C).

See also *Atlantic C. L. R. Co. v. Macon Groc. Co.*, 166 Fed. 206, (712-B).

Columbus Iron Co. v. Kanawha & M. R. Co., 171 Fed. 713, (945-A); 178 Fed. 261, (945-B).

Houston Coal Co. v. Norfolk & W. R. Co., 171 Fed. 723, 178 Fed. 266, (1060).

(38) *Houston Coal Co. v. Norfolk & W. R. Co.*, 171 Fed. 723, 178 Fed. 266, (1060).

Columbus Iron Co. v. Kanawha & M. R. Co., 171 Fed. 713, 715, (945-A); 178 Fed. 261, (945-B).

Powhatan Coal Co. v. Norfolk & W. R. Co., 178 Fed. 266, (945-B).

Tennessee Cent. R. Co. v. Southern R. Co., 178 Fed. 267, (945-B).

243. Same Subject—Difficulties Incident to Enjoining the Enforcement of Proposed Schedules.

The courts have no power to fix rates for the future.³⁹

Prior to the passage of the amendment of 1910, the commission had no power to pass, on the reasonableness of a proposed schedule. This amendment, however, gives the commission power to determine the reasonableness of a proposed rate and to suspend such rate pending the investigation.⁴⁰

244. Same Subject—Tariff Rates Binding on Both Carrier and Shipper—Contracts for Different Rates Unreasonable.

The published rate is binding on both carrier and shipper, and they may not contract for a different rate.⁴¹ Conditions not specified in the tariff are unenforceable.⁴²

Where, however, a tariff, through a mistake, specifies a rate from a point where the carrier has no station, a shipper who has reason to know this fact cannot force the carrier to protect such rate.⁴³

An agreement by the carrier to allow or protect a given rate is evidence that the agreed rate is a reasonable one.⁴⁴

But see *contra*, *Arlington Heights Co. v. Southern Pac. Co.*, 175 Fed. 141, (1076).

See also *Vanderslice-Lynd S. Co. v. Missouri Pac. R. Co.*, (728), (1902).

(39) *Columbus Iron Co. v. Kanawha & M. R. Co.*, 171 Fed. 713, 721, (945-A).

Houston Coal Co. v. Norfolk & W. R. Co., 171 Fed. 723, 725, (1060).

(40) See paragraph 2, of Section 15, *supra*, p. 30.

(41) *Hood v. Delaware & H. Co.*, 17 I. C. C. Rep. 15, 18, (1035).

Admin. Rul. No. 156, (April 5th. 1909).

Admin. Rul. No. 151, (March 1st, 1909).

See, however, *Wyman v. Boston & M. R. Co.*, 15 I. C. C. Rep. 577, 582, (607).

(42) *Woodward v. Louisville & N. R. Co.*, 15 I. C. C. Rep. 170, 172, (771-A).

Kile v. Deepwater R. Co., 15 I. C. C. Rep. 235, (790).

Carstens Co. v. Butte A. & P. R. Co., 15 I. C. C. Rep. 432, (821).

Horst Co. v. Southern Pac. R. Co., 17 I. C. C. Rep. 576, (1156).

(43) *Stone Co. v. Philadelphia, B. & W. R. Co.*, 18 I. C. C. Rep. 160, (1205).

(44) *Hood v. Delaware & H. R. Co.*, 17 I. C. C. Rep. 15, 18, (1035).

An erroneous rate quotation by the carrier's agent does not entitle a shipper to reparation although he has contracted on the basis of the rate quoted.⁴⁵ The fact that the tariffs are on file and open to public inspection charges shippers with notice of their contents.⁴⁶

(45) *Whitcomb v. Chicago & N. W. R. Co.*, 15 I. C. C. Rep. 27, (737).
DeCamp Bros. v. Southern R. Co., 16 I. C. C. Rep. 144, (903).
Alphons Co. v. Southern R. Co., 16 I. C. C. Rep. 584, (1023).
Crowell Co. v. Texas & Pac. R. Co., 17 I. C. C. Rep. 333, (1108).
Snyder Co. v. Chicago, B. & Q. R. Co., 18 I. C. C. Rep. 498, (1295).
Newding v. Missouri, K. & T. R. Co., 19 I. C. C. Rep. 29, (1341).
Alabama Co. v. Philadelphia, B. & W. R. Co., 19 I. C. C. Rep. 295, (1377).

In *Swift & Co. v. Chicago & A. R. Co.*, 16 I. C. C. Rep. 426, 429-430, (978), Commissioner Clark said:

" * * The shipper should give his shipment to the carrier that has at that time the lowest lawfully published applicable rate, and failing to do this, he should not expect the Commission later to authorize refund for the purpose of equalizing the rate of the line to which he gave his business with the lower lawful rate of a competing line which he might have used. The carrier whose lawful tariff rate is higher than that of a competing line has no right to solicit or accept shipment with the understanding or expectation that an order of reparation will be sought at the hands of the Commission for the purpose of equalizing to the shipper a rate which he could have secured by giving his shipment to another carrier."

In *Armour Car Lines v. Southern Pac. R. Co.*, 17 I. C. C. Rep. 461, 463, (1132), Commissioner Clements said:—

" * It is not for the Commission, in a search for justification of an award consented to by the carrier, to inquire in respect to every such transaction as to whether or not actual preference or prejudice has resulted in harm to any particular person. It would be a vain attempt in many cases for the Commission to undertake to ascertain with reasonable certainty just what has resulted and who has been injured by transactions of this kind. The lawmakers, assuming that such practices would naturally result in many instances in favoritism and irreparable wrong, have enacted the law which adjudges the practice itself to be wrong, and forbids it."

Cf. also *Folmer v. Great Nor. R. Co.*, 15 I. C. C. Rep. 33, (739).
Also *Spreckels v. Monongahela R. Co.*, 18 I. C. C. Rep. 190, (1216).
Marshall Co. v. St. Louis & S. F. R. Co., 18 I. C. C. Rep. 228, (964-B).
But see *Penrod Co. v. Chicago, B. & Q. R. Co.*, 15 I. C. C. Rep. 326, (808).

Ames Co. v. Rutland R. Co., 16 I. C. C. Rep. 479, (995).

(46) *Peale v. Central R. Co. of N. J.*, 18 I. C. C. Rep. 25, 33, (1171).

A shipper is not responsible, however, for the legality of a published rate.⁴⁷

The commission has held the carrier liable for the neglect by its agent in not securing a shipper's signature to a released valuation clause, where the shipper evidently wished to obtain the cheapest possible rate.⁴⁸

The amendment of 1910 added the following paragraphs to Section 6:

"If any common carrier subject to the provisions of this act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate,

In *Ohio Co. v. Wabash R. Co.*, 18 I. C. C. Rep. 299, 300, (1254), Cockrell, C., said:

"Shippers are presumed to know the rates and have access to tariffs, which are required to be filed in all railroad offices. The fact that the erroneous statement of the carrier's agent resulted in the shipment moving over the lines of defendants at a rate higher than that in force via another route does not entitle the complainant to an award of reparation. The act to regulate commerce does not confer upon this Commission authority to award damages because of such an error."

See also *Godfrey v. Texas, A. & L. R. Co.*, 15 I. C. C. Rep. 65, (749).

(47) *Interstate Remedy Co. v. American Exp. Co.*, 16 I. C. C. Rep. 436, 439, (982). In this case Commissioner Lane said:

"The responsibility rests upon the carrier to have lawful rates and rules in effect, and every shipper may with safety rely upon such rates without fear that they will be withdrawn as illegal after he has made shipment thereon, resting in the confidence that they are lawful so long as they are in force. If subsequently found to be unlawful, the carrier is subject to penalty for the institution and maintenance of such rates or rules, but the law does not contemplate that the shipper shall move upon any other theory than that the provisions of the carrier's tariff are in full compliance with the law's demands."

(48) *Southern Cotton Oil Co. v. Louisville & N. R. Co.*, 18 I. C. C. Rep. 180, (1212).

Southern Cot. Oil Co. v. Southern R. Co., 19 I. C. C. Rep. 79, (1353).

The jurisdiction of the Commission to award reparation in these cases might, perhaps, be questioned. See *infra*, §§264-265.

and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

This provision evidently does not enlarge the shipper's right to reparation on the ground of erroneous rate quotations, but should certainly tend to make the carrier's agents more careful in quoting rates.

With cases at the end of note (90) pp. 362-363, compare *Harmon v. Jensen*.⁴⁹

245. Same Subject—Claims on Account of Misrouting.

The administrative rulings of the commission, cited in note (92), p. 363, have been discussed in a number of cases.⁵⁰

See also *infra* § 265 for recent rulings in misrouting cases.

246. Same Subject—Agreements to Maintain Rates for a Fixed Period not Binding.⁵¹

(49) 176 Fed. 519, (1909).

(50) *Woodward v. Louisville & N. R. Co.*, 15 I. C. C. Rep. 170, 173, (771-A).

Thatcher Co. v. New York C. & H. R. R. Co., 16 I. C. C. Rep. 126, (897).

Hendrichson Co. v. Kansas City So. R. Co., 16 I. C. C. Rep. 129, (899).

Larrowe Co. v. Chicago & N. W. R. Co., 17 I. C. C. Rep. 443, (1130-A).

(51) *Pennsylvania R. Co. v. International Co.*, 173 Fed. 1, 3, (660-B).

Chesapeake & O. R. Co. v. Standard Lumber Co., 174 Fed. 107, (1061).

Re Contracts of Express Companies, 16 I. C. C. Rep. 246, 252-253, (926).

Cf. Loch Lynn Co. v. Baltimore & O. R. Co., 17 I. C. C. Rep. 396, (1121).

247. Same Subject—The Chesapeake & Ohio Case.

Compare *Cedar Hill Co. v. Atchison, T. & S. F. R. Co.*^{51*}

250. Same Subject—Tariff Rates via a Given Route Govern Shipments by Other Routes as to Which no Tariffs are on File.

The commission has held that where a through tariff prescribes no routing, the rate quoted is available over all reasonably direct routes via the lines of the carriers parties to the tariffs.⁵²

250a. Construction of Tariffs.

The shipping public cannot be charged with the intention of the framers of a tariff, or with the carrier's construction thereof; tariffs must be so framed as to be clear in themselves and their plain meaning governs, in spite of the fact that the history of the rate in question would point to a different intention on the part of the carriers filing the tariff.⁵³

Where a tariff is clear, an agreement inconsistent with it is of little value in its interpretation, but where it is ambiguous such an agreement may be employed as a medium of explanation.⁵⁴

A specific description in a tariff controls a mere general one.⁵⁵

Where there is in force a combination commodity rate and a through class rate, but no through commodity rate, the combination rate being lower than the class rate, the former is the legal rate applicable to the shipment.⁵⁶

(51*) 15 I. C. C. Rep. 73, (753-A); 16 I. C. C. Rep. 402, (753-B).

(52) *Germain Co. v. New Orleans & N. E. R. Co.*, 17 I. C. C. Rep. 22, 24, (1036).

See also *Standard Oil Co. v. U. S.*, 179 Fed. 614, 623, (572-B).

(53) *Hurlburt v. Lake S. & M. S. R. Co.*, 2 I. C. C. Rep. 122, 126, (52).

Newton Co. v. Chicago, B. & Q. R. Co., 16 I. C. C. Rep. 341, 347, (945).

(54) *Hood v. Delaware & H. Co.*, 17 I. C. C. Rep. 15, 18, (1035).

(55) *Fuller v. Southern Pac. Co.*, 18 I. C. C. Rep. 202, (1220).

Cf. Delray Co. v. Detroit, T. & T. R. Co., 18 I. C. C. Rep. 245, (1234).
But see *Rosenblatt v. Chicago & N. W. R. Co.*, 18 I. C. C. Rep. 261, (1242).

(56) *Barrett Co. v. Graham & M. Tr. Co.*, 16 I. C. C. Rep. 399, (968).

A contradictory provision in a tariff, manifestly the result of an error, may be treated as surplusage.⁵⁷

Small prizes or gifts, inserted in merchandise packages primarily for advertising purposes, should be rated as advertising premiums.⁵⁸

A higher rate on packages containing premiums does not apply to an article of little or no value attached as a mere brand or trade-mark.⁵⁹

A tariff providing for loading and unloading by the carrier is not complied with by delivery or receipt of the freight by the carrier at the car door.⁶⁰

The length of a car specified in a tariff is determined by inside measurement.⁶¹

In demurrage regulations the word "arrival" has been held to refer to the actual arrival of the cars and not to the time of receipt of notice of arrival by the consignee.⁶² The "date released" has been held to be the time of notice by the consignee to the carrier that the vessel was at the pier ready to receive the coal from the cars.⁶³

"Import traffic" has been held not to include goods shipped from the home port on a new and independent shipment, not part of a through haul from a foreign port.⁶⁴

The commission has also ruled that a rate on "cotton" includes

(57) *Larrowe Co. v. Chicago & N. W. R. Co.*, 17 I. C. C. Rep. 548, (1130-B).

(58) *Ouerbacker Co. v. Southern R. Co.*, 18 I. C. C. Rep. 566, (1318).

(59) *Iowa Soap Co. v. Chicago, B. & Q. R. Co.*, 16 I. C. C. Rep. 444, (986).

(60) *Schultz Co. v. Southern Pac. Co.*, 18 I. C. C. Rep. 234, 238-239, (1231).

(61) *Kaye Co. v. Minnesota & I. R. Co.*, 16 I. C. C. Rep. 285, (929).

(62) *Central R. of N. J. v. Hite*, 166 Fed. 976, (764-A).

Central R. of N. J. v. Hite, 171 Fed. 370, (764-B).

Cf. *Murphy v. New York C. & H. R. R. Co.*, 17 I. C. C. Rep. 457, (1131).

(63) *Central R. of N. J. v. Hite*, 171 Fed. 370, (764-B).

See also *Peale v. Central R. of N. J.*, 18 I. C. C. Rep. 25, 37, (1171).

(64) *Payne v. Morgan L. & T. R. & S. S. Co.*, 15 I. C. C. Rep. 185, (776).

"cotton linters";⁶⁵ that fuel wood should be rated as "property included in the outfit of intending settlers," where the wood was shipped along with the settler's other goods;⁶⁶ and that a rate on "lumber" properly covers ties.⁶⁷ See also *supra*, § 107.

For a definition of "gross ton" and "net ton" as used in tariffs, see Administrative Ruling No. 131, (Jan. 4th, 1909).

(65) *Salaman v. New Orleans & N. E. R. Co.*, 15 I. C. C. Rep. 332, (810).

(66) *Place v. Toledo P. & W. R. Co.*, 15 I. C. C. Rep. 543, (846).

(67) *American Tie Co. v. Kansas City S. R. Co.*, 175 Fed. 28, (1102).

CHAPTER XX.

THE COMMODITIES CLAUSE.

252. Scope and Constitutionality of the Commodities Clause.

In *United States v. Delaware and Hudson Company et al.*,¹ the Supreme Court, reviewing the decision of the Circuit Court for the Eastern District of Pennsylvania, held that the Commodities Clause, properly construed, was constitutional, but placed a construction on it which deprives it of all practical significance. Although the decision of the court below was reversed, the outcome of the case was still a virtual victory for the railroads.

The opinion of the court was delivered by Mr. Justice White and may be briefly summarized as follows:

The hardship and injurious consequences alleged to result from the enforcement of the statute as construed by the Government are not the criterion of its constitutionality. Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise, and by the other of which such questions are avoided, it is the duty of the court to adopt the latter (p. 408). If the Government's construction of the commodities clause be adopted, at least four grave constitutional questions must necessarily be decided by the court (pp. 406-407). Literally construed the clause would prohibit the transportation of articles manufactured, mined or produced by the carrier at any time previously, entirely irrespective of the ownership of such commodities by the carrier at the time of transportation, while in the case of mere ownership of commodities the carrier might legalize its transportation of them by a *bona fide* sale prior to shipment; it is the court's duty to harmonize these seemingly inconsistent provisions by adopting the more reasonable construction, holding that the clause does not prohibit the transportation of commodities by a carrier which, by a *bona fide* sale prior to transportation, has parted with its entire legal or equitable interest in them. The mere ownership by a carrier of stock in a company whose coal it transports does not constitute such an "indirect interest" as the statute contemplates. So construed, the statute is a valid regula-

(1) 213 U. S. 366, (713-B).

tion of commerce and constitutional. The Delaware & Hudson is a railway company subject to the regulation of the clause. Finally, neither the exception of timber, the alleged discrimination against coal railroads, nor the imposition of excessive penalties for the violation of the clause render it unconstitutional.

The gist of the decision is thus summarized by the court (p. 415):

"We then construe the statute as prohibiting a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities under the following circumstances and conditions: (a) When the article or commodity has been manufactured, mined or produced by a carrier under its authority, and at the time of transportation the carrier has not in good faith before the act of transportation dissociated itself from such article or commodity; (b) when the carrier owns the article or commodity to be transported in whole or in part; (c) when the carrier at the time of transportation has an interest, direct or indirect, in a legal or equitable sense in the article or commodity, not including, therefore, articles or commodities manufactured, mined, produced or owned, etc., by a *bona fide* corporation in which the railroad company is a stockholder."

The decision of the court below was reversed and remanded with directions for such further proceedings as might be necessary to apply and enforce the statute as above interpreted.

Mr. Justice Harlan delivered a short dissenting opinion, holding that in his judgment the clause, when properly construed, included stock ownership in coal companies, and that any other view would enable the carriers by one device or another to defeat altogether the purpose of Congress, which was to divorce, in a real substantial sense, production and transportation, and thereby to prevent the transporting company from doing injustice to other owners of coal.

As a result of the decision, the Delaware & Hudson and Delaware, Lackawanna & Western companies have organized coal companies to take over their coal lands.

CHAPTER XXII.

SWITCH CONNECTIONS.

259. Construction of the Provision.

The decision by the Circuit Court in Delaware, L. & W. R. Co. v. I. C. C.,¹ cited in note (7), p. 379, was affirmed by the Supreme Court, holding that the act as it stood prior to 1910 contained no provision for a complaint or application for a switch by a lateral branch line.² This defect in the act was, however, endeavored to be cured by the amendment of 1910.³

The commission has no authority to order the construction of a private siding for a shipper, its power being limited to ordering the carrier to make switch connection with a private side track already constructed.⁴

As to whether the terms "lateral, branch line of railroad" mean to include only such roads as are naturally tributary to the line of the carrier ordered to make the connection, and dependent on it for an outlet to the markets of the country, see *I. C. C. v. Delaware, L. & W. R. Co.*⁵

For a case where the commission refused to sanction the repayment by a carrier to a shipper of the cost of constructing a siding, see Administrative Ruling No. 110, (Nov. 10th, 1908).

(1) 166 Fed. 498, (683-B).

(2) *I. C. C. v. Delaware, L. & W. R. Co.*, 216 U. S. 531, (683-C).

(3) Paragraph 7, of section 1, *supra*, p. 7.

(4) *Winters Co. v. Chicago, M. & St. P. R. Co.*, 16 I. C. C. Rep. 587, 589, (1024).

(5) 216 U. S. 531, 537, (683-C).

CHAPTER XXIII.

LIMITATION OF LIABILITY AND LOSSES BEYOND THE CARRIER'S LINE.

261. Constitutionality of the Provision.

The constitutionality of this clause has again been upheld by a Circuit Court.¹

This provision does not deprive a shipper of any rights he may have under State statutes forbidding the limitation of liability.²

262. Construction of the Provision.

Since Section 20 specifies no court in which a shipper may recover damages from an initial carrier for losses beyond the latter's line, such an action may be brought either in the State or Federal courts.³

As to the duty of a carrier to issue a separate bill of lading for the return of empty milk cans, see *Fairmont Creamery v. Pacific Exp. Co.*⁴

A number of State courts have held that this provision does not invalidate the agreed-valuation clause customarily inserted by express companies in shipping receipts, and that interstate shippers in such cases can not recover beyond the agreed valuation.⁵

(1) *Riverside Mills v. Atlantic C. L. R. Co.*, 168 Fed. 987, (760-A).

(2) *Latta v. Chicago, St. P., M. & O. R. Co.*, 172 Fed. 850, (1909).

(3) *Smeltzer v. St. Louis & S. F. R. Co.*, 168 Fed. 420, (588-B).

(4) 15 I. C. C. Rep. 134, (757).

(5) *Greenwald v. Barrett*—N. Y.—(June 27th, 1910).

(This case involved the Adams Express Co. receipt).

Travis v. Wells Fargo Exp. Co., 74 Atl. 444, (N. J.), (1910).

Barnard v. Adams Exp. Co., 91 N. E. 325, (Mass.)

See also *Wright v. Adams Exp. Co.*, 43 Pa. Super. 40, (1910), (appeal to Supreme Court of Pennsylvania pending.)

PART II.

The Enforcement of the Act.

CHAPTER XXIV.

THE COMMISSION, ITS NATURE, POWERS AND DUTIES.

263. Status and Functions of the Commission(1)—*Stare Decisis*.

In *Cincinnati v. Cincinnati, N. O. & T. P. R. Co.*,² Commissioner Prouty said:

“Plainly there can be no such thing as judicial estoppel in the proceedings of this commission since its orders are not judgments nor is it a judicial body.”

Although ordinarily it is the duty of a judicial tribunal to pass on the question of its jurisdiction before going into the merits of the case, this rule does not apply to an administrative body like the commission, and where it does not consider a party entitled to relief it will dismiss the complaint on the merits without going into the question of jurisdiction.³

To cases in note (7), p. 385, add: *Gund v. Chicago, B. & Q. R. Co.*⁴

(1) See *Washer Co. v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 147, 155, 156, (763).

(2) 18 I. C. C. Rep. 440, 444, (183-F).

As is the application of the principal of *stare decisis* to proceedings before the Commission, see also *Ferguson Co. v. St. Louis, I. M. & S. R. Co.*, 18 I. C. C. Rep. 391, (1276).

Waco Fr. Bur. v. Houston & T. C. R. Co., 19 I. C. C. Rep. 22, (1340).
National Hay Assn. v. Michigan Cent. R. Co., 19 I. C. C. Rep. 34, (1343).

Hillsdale Co. v. Penna. R. Co., 19 I. C. C. Rep. 356, 361, (1383).

(3) *Snook v. Central R. of N. J.*, 17 I. C. C. Rep. 375, (1114).

(4) 18 I. C. C. Rep. 364, (1265).

264. Powers of the Commission—None Except Those Prescribed by the Act.

In *Joynes v. Pennsylvania R. Co.*,⁵ the commission said that, in doubtful cases, it should not assume jurisdiction, but resolve the doubt in favor of the courts where such jurisdiction was ordinarily vested.

The commission has no power to hold the rates of an express company on small packages unlawful because in violation of the postal laws.⁶ Nor can it regulate the relations between the carrier and its employees;⁷ nor authorize a carrier to accept less than its tariff rates.⁸

Reasonable deductions made by carriers for warehousing grain on account of loss of grain in the process of elevation are not within the regulating power of the commission, it not appearing that the practice complained of gives rise to any unjust discrimination, undue preference, or other violation of the Act.⁹

265. Same Subject—Power to Award Damages for Misrouting.

The power of the commission, prior to the amendment of 1910, to award damages for failure by the carrier to route freight as directed, or, in the absence of direction, by the cheapest route available has been upheld by the commission and damages awarded in several recent cases.¹⁰ The commission has also awarded damages for the failure by a carrier's agent to call a shipper's attention to a released valuation clause in a bill of lading and obtain

(5) 17 I. C. C. Rep. 361, 368, (1112).

(6) *Williams v. Wells Fargo Co.*, 18 I. C. C. Rep. 17, (1168).

(7) Admin. Rul. No. 105, (Nov. 9th, 1908).

(8) *Males Co. v. Lehigh & H. Co.*, 17 I. C. C. Rep. 280, 282, (1088). See, however, *Old Dom. Co. v. Penna. R. Co.*, 17 I. C. C. Rep. 309, 312, (1101).

(9) *Baltimore Ch. of Com. v. Penna. R. Co.*, 15 I. C. C. Rep. 341, (811).

(10) *Woodward v. Louisville & N. R. Co.*, 15 I. C. C. Rep. 170, 172, (771-A).

Duluth Log Co. v. Minnesota & S. R. Co., 15 I. C. C. Rep. 192, (777). *Carstens Co. v. Oregon R. & N. Co.*, 15 I. C. C. Rep. 482, (835).

Thatcher Co. v. New York C. & H. R. R. Co., 16 I. C. C. Rep. 126, (897). *Hendrickson Co. v. Kansas City So. R. Co.*, 16 I. C. C. Rep. 129, (899).

his signature to the same, so as to secure for the shipper the lower rate of which he evidently desired to avail himself.¹²

Where the carrier routes freight as ordered by the shipper, the latter is entitled to no reparation though the shipment might have been sent by a cheaper route,¹³ and it is immaterial that the shipper's routing directions were the result of erroneous advice by the carrier's agent.¹⁴ Where, however, the carrier's agent inserted routing instructions in the bill of lading without direction from the consignor, the mere acceptance of such bill of lading by the shipper was held not to relieve the carrier from liability for damages for failure to forward the freight by the cheapest route.¹⁵

Even where routing instructions are given by the shipper, the carrier must forward the freight over the designated route in the

Marshall Co. v. St. Louis & S. F. R. Co., 16 I. C. C. Rep. 385, (964).
Foster Co. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 292, (1093).
Southern Cot. Oil Co. v. Louisville & N. R. Co., 18 I. C. C. Rep. 180, (1212).

Platten Co. v. Kalamazoo L. S. & C. R. Co., 18 I. C. C. Rep. 249, (1237).

Willburine Works v. Penna. R. Co., 18 I. C. C. Rep. 548, (1311).

Willson Bros. v. Norfolk So. R. Co., 19 I. C. C. Rep. 293, (1376).

Cf. Gamble v. Chicago, B. & Q. R. Co., 18 I. C. C. Rep. 357, (1263).

See also Admin. Rul. No. 139, (Feb. 2d, 1909).

Admin. Rul. No. 140, (Feb. 2d, 1909).

(12) Southern Cot. Oil Co. v. Louisville & N. R. Co., 18 I. C. C. Rep. 180, (1212).

Southern Cot. Oil Co. v. Southern R. Co., 19 I. C. C. Rep. 79, (1353).

(13) Counsil v. St. Louis & S. F. R. Co., 16 I. C. C. Rep. 188, (914).

Preston v. Chesapeake & O. R. Co., 16 I. C. C. Rep. 565, (1017).

South Canon Co. v. Colorado & So. R. Co., 17 I. C. C. Rep. 286, (1090).

Foster Co. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 292, (1093).

Donahue v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 92, (1184).

Spreckles Co. v. Monongahela R. Co., 18 I. C. C. Rep. 190, (1216).

Hollingshead Co. v. Pittsburgh & L. E. R. Co., 18 I. C. C. Rep. 193, (1217).

As to what are sufficient routing instructions see Prentiss Co. v. Penna. R. Co., 19 I. C. C. Rep. 68, (1350).

(14) Spreckles Co. v. Monongahela R. Co., 18 I. C. C. Rep. 190, (1216).

Marshall Co. v. St. Louis & S. F. R. Co., 18 I. C. C. Rep. 228, (964-B).

(15) Jones v. Kansas City So. R. Co., 17 I. C. C. Rep. 468, (1135).

cheapest manner.¹⁶ It is bound, however, only to use the most natural route available, and is under no duty to examine all possible tariffs for lower combinations.¹⁷

In the absence of routing instructions it is the carrier's duty to use the cheapest route by its own line¹⁸ but it is not bound to route the freight over the line of another carrier, even though a lower rate is thus obtainable;¹⁹ nor is it bound to route via a water line, where there is a possible all-rail route though with a higher rate.²⁰

Where no joint rate exists it is the carrier's duty to use the lowest combination;²¹ where two possible combinations are available the lower is the legal rate, and if the shipment is routed by the more expensive route the shipper may recover the difference.²²

The commission has held that where a shipper designates a route and a rate but the rate does not apply over the route named, the shipment must be forwarded by the route over which the stated rate applies, unless the rate by the specified route is lower, in which case the specified routing must be followed.²³ The soundness of this ruling would seem to be questionable. It ignores a well known principle in the law of carriers, making the carrier liable as an insurer where the freight is forwarded by a route

(16) *Duluth Log Co. v. Minnesota & I. R. Co.*, 15 I. C. C. Rep. 627, (866).

(17) *Wheeler Co. v. Chicago, M. & St. P. R. Co.*, 16 I. C. C. Rep. 525, (1008).

(18) *Lebanon Co. v. Elgin R. Co.*, 18 I. C. C. Rep. 591, (1324).

(19) *Hill v. Missouri, K. & T. R. Co.*, 16 I. C. C. Rep. 569, (1019).

(20) Admin. Rul. No. 190, (June 14th, 1909).

See also *Hollingshead Co. v. Pittsburgh & L. E. R. Co.*, 18 I. C. C. Rep. 193, (1217).

Platten Co. v. Kalamazoo L. S. & C. R. Co., 18 I. C. C. Rep. 249, (1237).

(21) *Contact Co. v. New York Cent. & H. R. R. Co.*, 17 I. C. C. Rep. 184, (1069).

(22) *Larrowe Co. v. Chicago & N. W. R. Co.*, 17 I. C. C. Rep. 443, (1130-A).

Rehberg v. Erie R. Co., 17 I. C. C. Rep. 508, (1145).

(23) Admin. Rul. No. 159, (April 6th, 1909).

Admin. Rul. No. 186, (June 8th, 1909).

Alpha Co. v. Delaware, L. & W. R. Co., 19 I. C. C. Rep. 297, (1378).

other than that designated; see *Hutchinson on Carriers*, §§ 294-296, 480, etc.

Damages for misrouting cannot be based on a lower available combination rate, all the factors of which are not within the commission's jurisdiction.²⁴

The commission has ruled that the larger lines should ordinarily relieve the small initial carriers of the responsibility for correct routing, by reason of their wider opportunities for knowing what are reasonably direct routes.²⁵

Where the shipper gives routing instructions to the initial carrier, which the latter neglects to transmit to its connecting line, the initial carrier is responsible for excess charges resulting from the latter's routing the freight over a route yielding it the greater revenue.²⁶

In misrouting cases, a shipper may recover not merely such damages as could reasonably have been anticipated to arise from the carrier's action, but all charges in excess of what would have accrued if the misrouting had not occurred.²⁷ Demurrage will not ordinarily be included in reparation awarded for misrouting, but may be in special cases.²⁸ In several decisions the commission has discussed the practice of adjusting misrouting claims informally under the administrative rulings cited in note (22), p. 387.²⁹

(24) *De Bary v. Louisiana W. R. Co.*, 18 I. C. C. Rep. 527, (1304). See also §41.

(25) *Duluth Co. v. Chicago, St. P., M. & O. R. Co.*, 18 I. C. C. Rep. 485, 489, (1291).

Noble v. Toledo & W. R. Co., 18 I. C. C. Rep. 494, (1293)

(26) Admin. Rul. No. 137, (Feb. 2d, 1909).

See also Admin. Rul. No. 199, (June 22d, 1909).

Cameron v. Northern Pac. R. Co., 18 I. C. C. Rep. 560, (1316).

(27) *Kile v. Deepwater R. Co.*, 15 I. C. C. Rep. 235, 238, (790).

(28) *Cressey v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 132, (1198).

(29) *Woodward v. Louisville & N. R. Co.*, 15 I. C. C. Rep. 170, 173, (771-A).

Crosby v. Goodrich Tr. Co., 17 I. C. C. Rep. 175, (1066).

See also Admin. Rul. No. 167, (April 13th, 1909).

Admin. Rul. No. 198, (June 22d, 1909).

This practice includes cases of misrouting passengers as well as freight. Admin. Rul. No. 113, (Nov. 12th, 1908).

The commission has ruled that where a railroad ships company material over another line with directions to route for part of the journey by its own line, over which it could have hauled it free of charge, the shipping road may recover reparation for failure by the other line to route as directed, although the shipment in fact proceeded by a route taking the same tariff rate as that designated, and although the second road did not know that the shipment was company material.³⁰

The amendment of 1910 added the following paragraph to Section 15:

"In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported."

This provision clearly makes it the statutory duty of carriers to route freight as directed. The question of the commission's

(30) Admin. Rul. No. 143, (Feb. 8th, 1909).

power to award reparation where, in the absence of routing directions, the carrier has failed to forward the freight by the cheapest available route, would still seem open to doubt.

267. Power to Regulate Physical Operation—No Such Power Prior to Hepburn Amendment.

The commission has no power to award damages suffered by a shipper on account of defective service;³¹ or for failure to make schedule time.³² In *Blume & Co. v. Wells Fargo & Co.*,³³ Commissioner Harlan said:

“It was not intended by the Congress that the commission should supplant and take the place of the courts with respect to that large class of complaints that may arise out of the failure of carriers to carry out their contracts of transportation promptly and safely and properly to perform their duties as common carriers in the handling of shipments entrusted to them for carriage from one point to another.”

The commission has recently held that its power to award damages is limited to rate damages, and does not extend to general damages, although such be suffered by reason of violation of the act.³⁴

It has awarded damages, however, for the neglect by the carrier's agent to secure a shipper's signature to a released valuation clause in a bill of lading.³⁵

It cannot order a carrier to place an embargo on a particular shipment.³⁶

(31) See *Acme Co. v. Wabash R. Co.*, 18 I. C. C. Rep. 557, (1315).

(32) Admin. Rul. No. 127, (Dec. 8th, 1908).

(33) 15 I. C. C. Rep. 53, (746).

Cf. *Carstens Co. v. Oregon R. & N. Co.*, 17 I. C. C. Rep. 125, (1052).

(34) *Joynes v. Penna. R. Co.*, 17 I. C. C. Rep. 361, (1112).

See further as to this decision *infra*, § 280.

Also *Hillsdale Co. v. Penna. R. Co.*, 19 I. C. C. Rep. 356, 372, (1383).

American Works v. Illinois Cent. R. Co., 18 I. C. C. Rep. 212, (1225).

Cf. *Kiel Co. v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 242, (1233).

(35) *Southern Cot. Oil Co. v. Louisville & N. R. Co.*, 18 I. C. C. Rep. 180, (1212).

Southern Cot. Oil Co. v. Southern R. Co., 19 I. C. C. Rep. 79, (1353)

(36) *Peale v. Central R. of N. J.*, 18 I. C. C. Rep. 25, 34, (1171).

It has no power to establish rates of carriers in the first instance³⁷ nor can it compel the sale of mileage tickets.³⁸

As to whether the commission has power to require a carrier to allow transit privileges on a given commodity, see *Douglas v. Chicago, R. I. & P. R. Co.*³⁹

The commission has said that carriers have the right reasonably and practically to adjust the speed and stops of their trains to the various circumstances and conditions existing along their lines at the different places, and it would seem that the commission will not interfere with their action in this regard, on a charge of discrimination or preference, except in clear cases.⁴⁰

268. Same Subject—Effect of the Hepburn Amendment.

As to whether, since the Hepburn amendment, the commission has power to require a carrier to furnish a particular kind of car, see *Mountain Ice Co. v. Delaware, L. & W. R. Co.*⁴¹

269. Same Subject—Location of Stations.

As to the power of the commission to control the location of stations, see *Snook v. Central R. of N. J.*⁴²

273. Effect of the Hepburn Amendment on the Power of the Commission to Fix Rates.

The grant of power to fix rates in no respect changed the construction of Sections 3 and 4 of the act.⁴³

See changes made in Section 15 by the amendment of 1910, *supra*, pp. 28 *et seq.*

(37) *Williams v. Wells Fargo & Co.*, 18 I. C. C. Rep. 17, (1158).

(38) *Eschner v. Pennsylvania Railroad Co.*, 18 I. C. C. Rep. 60, 63, (1177).

(39) 16 I. C. C. Rep. 232, 245, (925).

(40) *Loch Lynn Co. v. Baltimore & O. R. Co.*, 17 I. C. C. Rep. 396, (1121).

(41) 15 I. C. C. Rep. 305, 322, (806-A).

(42) 17 I. C. C. Rep. 375, (1114).

(43) *Spokane v. Northern Pac. R. Co.*, 15 I. C. C. Rep. 376, 388, (816).

274. The Commission Has no Power to Order an Increase in Rates.⁴⁴

276. Power to Prescribe Through Routes and Joint Rates—In General.⁴⁵

Paragraphs 2 and 3 of Section 15 were amended in 1910 to read as follows:

“The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.

“And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route

(44) *Kent Co. v. New York C. & H. R. R. Co.*, 15 I. C. C. Rep. 439, 442, (824).

Kansas City Tr. Bur. v. Atchison, T. & S. F. R. Co., 15 I. C. C. Rep. 491, 497-498, (838).

(45) See *Oklahoma v. Chicago, R. I. & P. R. Co.*, 17 I. C. C. Rep. 379, (1115).

unreasonably long as compared with another practicable through route which could otherwise be established."

The commission has refused to require a railroad to establish a through route with a small line, not a regular common carrier.⁴⁶

The commission is not obliged to order a through route in every case where none already exists, and need do so only in a proper case, where the public interest appears to require it.⁴⁷

The act does not require carriers to unite in through routes to and from all points.⁴⁸

Prior to the amendment of 1910 a carrier might not justify its refusal to unite in a through route and joint rate on the ground that it was better to its advantage to supply the market with the commodity in question from producing points on its own rails.⁴⁹

In *Milwaukee v. Chicago, R. I. & P. R. Co.*,⁵⁰ Commissioner Harlan said:

"In general, the carrier may demand of the shipping public nothing beyond a reasonable compensation for the services rendered. It can not force its services upon a shipper or insist upon carrying his shipment to one market when he desires

(46) *Crane R. Co. v. Phila. & R. R. Co.*, 15 I. C. C. Rep. 248, (793).
See also *Crane Iron Wks. v. Central R. of N. J.*, 17 I. C. C. Rep. 514, (1147).

(47) *Crane R. Co. v. Phila. & R. R. R. Co.*, 15 I. C. C. Rep. 248, (793).
Des Moines v. Chicago, R. I. & P. R. Co., 17 I. C. C. Rep. 54, (1040).
Bentley v. Lake S. & M.S. R. Co., 17 I. C. C. Rep. 56, (1041).
Baer Bros. Co. v. Missouri Pac. R. Co., 17 I. C. C. Rep. 225, 228, (1081).

Crane Iron Works v. Central R. of N. J., 17 I. C. C. Rep. 514, (1147).

(48) *Enterprise Fuel Co. v. Penna. R. Co.*, 16 I. C. C. Rep. 219, 224, (923).

(49) *Northern Coal Co. v. Colorado & So. R. Co.*, 16 I. C. C. Rep. 369, (959).

Delray Co. v. Chicago, St. P., M. & O. R. Co., 16 I. C. C. Rep. 509, 511, (1005).

Cedar Hill Co. v. Colorado & So. R. Co., 17 I. C. C. Rep. 479, (1138).
Cf. *Midland Co. v. Kansas S. W. R. Co.*, 15 I. C. C. Rep. 610, (862).
Standard Lime Co. v. Cumberland Val. R. Co., 15 I. C. C. Rep. 620, (865).

Acme Co. v. Chicago G. W. R. Co., 18 I. C. C. Rep. 19, 21, (1169).

(50) 15 I. C. C. Rep. 460, 464, (829).

to reach another market. It has no right to insist that a shipment shall go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. Nor may the carrier accomplish these results indirectly by any unreasonable adjustment of its rate schedules with that end in view. It can not lawfully compel the shipping public to contribute to its revenues on any such grounds."

In *Enterprise Fuel Co. v. Pennsylvania R. Co.*,⁵¹ Commissioner Lane said:

"A railroad may not say that it can retain a monopoly on a certain traffic no matter what its service or what the public necessities require. A shipper, on the other hand, is not entitled to a through route because he may not be as conveniently served by one railroad as another."

The act as amended in 1910, however, would seem to allow the carrier reasonably to protect its interest in securing long hauls.⁵²

The commission has ordered through routes and joint rates in a number of recent cases.⁵³

277. Same Subject—What Constituted a Reasonable and Satisfactory Through Route.

Prior to 1910 the commission had no power to prescribe a through route and joint rate where a reasonable or satisfactory one already existed;⁵⁴ and the existence of such a through route was a matter which might be inquired into by the courts.⁵⁵ The existence of a through route to one part of a large city did not necessarily preclude the commission from prescribing a through route to another part for the benefit of shippers who could not well

(51) 16 I. C. C. Rep. 219, 222, (923).

(52) See paragraph 4, of Section 15, as amended, quoted *supra*.

(53) *Milwaukee v. Chicago, R. I. & P. R. Co.*, 15 I. C. C. Rep. 460, (829).

Kalispell Co. v. Great Nor. R. Co., 16 I. C. C. Rep. 164, (909).

Partridge Co. v. Great Nor. R. Co., 17 I. C. C. Rep. 276, (1087).

Saginaw Co. v. Atchison, T. & S. F. R. Co., 19 I. C. C. Rep. 119, (1361).

Bott v. Chicago, B. & Q. R. Co., 19 I. C. C. Rep. 136, (1363).

(54) *Spring Hill Co. v. Erie R. Co.*, 18 I. C. C. Rep. 508, (1298).

(55) *I. C. C. v. Northern Pac. R. Co.*, 216 U. S. 538, (936-B).

use the first.⁵⁶ Where, however, a through route existed over a line having a siding three-quarters of a mile from complainant's factory, the commission held that it was without jurisdiction to compel another through rate by a more convenient line.⁵⁷

Under the act as it stood prior to the amendment of 1910, the Supreme Court held, reversing the commission, that the personal preference of passengers to travel by another route, or their desire to behold natural scenery over a route other than that established, would not warrant a finding by the commission that the existing route, which furnished adequate facilities for travel, was not reasonable or satisfactory.⁵⁸

The amendment of 1910 struck out the words "Provided no reasonable or satisfactory through route exists."

278. Same Subject—Power to Regulate Interchange of Equipment.

From the close of the opinion of Mr. Justice White in the recent case of *St. Louis S. W. R. Co. v. Arkansas*,⁵⁹ it might seem that perhaps the Supreme Court regards the commission as vested with power to regulate the terms of the interchange of equipment between carriers parties to joint through rates.

The amendment of 1910 added the following to Paragraph 2 of Section 1, as an additional statutory duty on the part of carriers subject to the act:

"and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto."

279. Same Subject—Division of Joint Rates Among Carriers.

The practice of the commission is to leave the division of a

(56) *Enterprise Fuel Co. v. Penna. R. Co.*, 16 I. C. C. Rep. 219, (923).

(57) *Southern Cal. Sugar Co. v. San P. L. A. & S. L. R. Co.*, 19 I. C. C. Rep. 6, (1335).

(58) *I. C. C. v. Northern Pac. R. Co.*, 216 U. S. 538, (936-B).

(59) 217 U. S. 136, 150, (1910).

through rate prescribed to the voluntary adjustment of the carriers parties to it, wherever possible.⁶⁰

The establishment of a through route does not necessarily involve a joint rate, as the carriers may be required to publish their local rates as proportionals applicable to through traffic.⁶¹

280. Power to Award Damages.

Although the commission has said that it is its duty to pass on the question of damages in every case in which the question is involved,⁶² it has recently ruled that its power to award damages extends only to "rate damages" and not to general damages, although the latter may have resulted solely from a violation of the act which it is the commission's especial function to enforce.⁶³ In such cases the commission's practice would seem to be to make a finding that the general damage results from an overcharge or from an unjust discrimination, leaving it to a court and jury to determine and award the damage. The decision in question would seem to be in conflict with the many previous rulings by the commission, cited in Commissioner Lane's dissenting opinion. In cases where a shipper suffers general damages by reason of a violation of the act, and on application to the commission he is thus denied relief, since the act provides no appeal to the courts by a shipper, it may be forcibly argued the shipper has not been given the right to a jury trial which the 7th amendment to the Constitution guarantees him. The courts may, however, solve the difficulty thus presented by entertaining an original proceeding for reparation by a shipper after he has obtained a finding by the

(60) *Enterprise Fuel Co. v. Penna. R. Co.*, 16 I. C. C. Rep. 219, 225, (923).

(61) *Blankenship v. Big S. & C. R. Co.*, 17 I. C. C. Rep. 569, 572, (1153).

(62) *Washer Co. v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 147, 154, (763).

Allen v. Pittsburgh C. C. & St. L. R. Co., 16 I. C. C. Rep. 293, (933).

(63) *Joynes v. Penna. R. Co.*, 17 I. C. C. Rep. 361, (1112).

American Works v. Illinois Cent. R. Co., 18 I. C. C. Rep. 212, (1225). Cf. also *Kiel Co. v. Chicago, M. & St. P. R. Co.*, 19 I. C. C. Rep. 242, (1233).

And see *Washer Co. v. Missouri Pac. R. Co.*, 147, (763).

Allender v. Chicago, B. & Q. R. Co., 16 I. C. C. Rep. 103, (894).

commission that the facts present a violation of the act, although serious hardship might result from the expiration of the limitation period in such cases.

In any case where the commission denies relief to a shipper, the same constitutional difficulty would seem to present itself. The decision in the Abeline Cotton Oil case and the failure of the act to allow appeals by a shipper, precludes him from having his claim for reparation decided by a jury, either in a State or Federal court. From a dictum at the end of the majority decision in Hillsdale Coal Co. v. Penna. R. Co.,⁶⁴ it would seem that the commission may modify the rule in the Joynes case.

The commission has no power to allow a set-off⁶⁵ or to require a shipper to make good an undercharge.⁶⁶

Where a transportation service is performed for which no tariff authority exists, the commission may order a refund of the amount by which the rate paid exceeds a reasonable rate.⁶⁷

In order to enable the commission to grant relief it must appear that the rate complained of has actually been paid; the commission cannot authorize the carrier to accept less than its tariff rate.⁶⁸

281. Power Over Regulations Affecting Rates.

Under the act as amended in 1906 and 1910, the commission has power to order the discontinuance of any regulation or practice affecting rates, and to require the adoption of a reasonable substitute therefor.⁶⁹

(64) 19 I. C. C. Rep. 356, 372, (1383), (see dissenting opinions).

(65) Laning Harris Co. v. St. Louis & S. F. R. Co., 15 I. C. C. Rep. 37, 38, (740).

Admin. Rul. No. 133, (Jan. 7th, 1909).

(66) Falls v. Chicago, R. I. & P. R. Co., 15 I. C. C. Rep. 269, 273, (797).

(67) Memphis Fr. Bur. v. Kansas City So. R. Co., 17 I. C. C. Rep. 90, (1046); (see dissenting opinion).

(68) Males Co. v. Lehigh & H. Co., 17 I. C. C. Rep. 280, 282, (1088). See also Peale v. Central R. of N. J., 18 I. C. C. Rep. 25, 33, (1171). U. S. v. Denver & R. G. R. Co., 18 I. C. C. Rep. 7, 10, (1164). But see Old Dom. Co. v. Penna. R. Co., 17 I. C. C. Rep. 309, 312, (1101).

(69) See paragraph 1, of Section 15, *supra*, p. 28.

Also Peale v. Central R. of N. J., 18 I. C. C. Rep. 25, 35, (1171).

National Hay Assn. v. Michigan Cent. R. Co., 19 I. C. C. Rep. 34, (1343).

The power of the commission to forbid undue preferences and unjust discriminations extends not only to practices of a character to affect rates, but covers all preferences and discriminations forbidden by Section 3 of the act.⁷⁰

283. Allowances to Shippers for Services.

In *Star Grain Co. v. Atchison, T. & S. F. R. Co.*,⁷¹ Commissioner Harlan, in delivering the opinion of the majority of the commission, said:

"Any allowance or division made to or with a tap line that is owned or controlled, directly or indirectly, by the lumber mill or by its officers or proprietors and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates."

The commission here held that it would not recognize a tap line as entitled either to allowances or divisions of through rates, where such carrier did not in all respects comply with the Act, and that allowances to such tap lines as did not comply with the law, whether incorporated or not, were unlawful.

In a recent case the court intimated that reasonable compensation for services included not merely the cost of the service, but reasonable reward therefor in addition.⁷²

For a case in which the commission refused to order a carrier to repay to a shipper the cost incurred in building a private spur track, see Administrative Ruling No. 110, (Nov. 10th, 1908).

285. Powers of Investigation.

For changes in Paragraph 2 of Section 20, effected by the amendment of 1910, see *supra*, p. 45 et seq.

(70) *I. C. C. v. Illinois Cent. R. Co.*, 215 U. S. 452, 475-477, (631-C).

(71) 17 I. C. C. Rep. 338, 345, (703-B).

See also *Taenzler v. Chicago, R. I. & P. R. Co.*, 170 Fed. 240, (1909).
Fathauer v. St. Louis, I. M. & S. R. Co., 18 I. C. C. Rep. 517, (1302).

(72) *Peavey v. Union Pac. R. Co.*, 176 Fed. 409, 426, (351-D).

CHAPTER XXV.

PRACTICE BEFORE THE COMMISSION.

290. General Attitude of the Commission—Toward Shippers—Protecting the Weak Against the Strong.

In *Association v. Chicago & N. W. R. Co.*,¹ Commissioner Prouty said:

“In the imposition of freight rates the man who has little with which to pay should not be charged in excess of his more fortunate competitor.”

The commission will not prescribe a carload rate lower than the “any quantity” rate in force.²

It also hesitates to give its sanction to a rule which will tend to benefit dishonest shippers as against honest ones.³

292. Same Subject—Spite Cases not Favored.

The decision in *International Coal Mining Co. v. Pennsylvania R. Co.*,⁴ cited in note (8), p. 410, has been affirmed by the Circuit Court of Appeals.⁵

For case where the commission denied relief to a shipper who did not come into court with clean hands, see *Sligo Co. v. Atchison, T. & S. F. R. Co.*⁶

(1) 16 I. C. C. Rep. 405, 406, (970).

(2) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 15 I. C. C. Rep. 504, 526, (841).

Bentley v. Lake S. & M. S. R. Co., 17 I. C. C. Rep. 56, (1041).

Cf. also *Sligo Co. v. Atchison, T. & S. F. R. Co.*, 17 I. C. C. Rep. 139, 142, (1054), where the Commission refused to pass on the reasonableness of a local rate which could be used only as a means of improperly evading the payment of the published through rates.

(3) *Duncan v. Nashville, C. & St. L. R. Co.*, 16 I. C. C. Rep. 590, 595, (1025).

(4) 162 Fed. 996, (660-A).

(5) *Penna. R. Co. v. International Coal Mining Co.*, 173 Fed. 1, (660-B).

(6) 17 I. C. C. Rep. 139, 142, (1054).

293. Same Subject—Transactions in Dual Capacity of Carrier and Shipper or Dealer Closely Scrutinized.

In *Crane R. Co. v. Philadelphia & R. R. Co.*,⁷ Chairman Knapp said:

"The ownership of a rail line by a shipper which serves that shipper, and perhaps a number of others, calls for the closest scrutiny of all charges and practices to ascertain whether there is undue discrimination through divisions or allowances which are the equivalent of rebates to the shipping owner."

296. Where the Carriers are Evidently Desirous of Complying with the Law, the Commission Will Not Usually Interfere.

For practice in cases where the carrier concedes the relief prayed for, see *infra* § 310.

297. Procedure Before the Commission.

In *Memphis Fr. Bur. v. St. Louis & S. F. R. Co.*,⁸ Commissioner Harlan said:

"The practice rules long ago adopted by the commission, while not overlooking the definite requirements of the law in this respect, were intended to relieve complainants, so far as possible, from the observance of the technical rules of pleading, in order that shippers unskilled in such matters might bring their troubles to our attention in their own proper persons."

Rule 14 of the Commission's Rules of Practice was amended on Feb. 2nd, 1909, to read as follows:

"Briefs.—Unless otherwise specially ordered printed briefs shall be filed on behalf of the parties in each case. The brief for complainant and the brief or briefs for the defendants, or interveners, shall contain an abstract of the evidence relied upon by the parties filing the same, and in such abstract reference shall be made to the pages of the record wherein the evidence appears. The abstract of evidence should follow the statement of the case and precede the argument.

"Briefs shall be printed in 12-point type on antique-finished

(7) 15 I. C. C. Rep. 248, 253, (793).

(8) 18 I. C. C. Rep. 67, 69, (1179).

paper, 5 $\frac{7}{8}$ inches wide by 9 inches long, with suitable margins, double-leaded text and single-leaded citations.

"At the close of the taking of testimony in each case the commissioner or examiner before whom such testimony is taken shall fix the specific dates on or before which the briefs of the respective parties must be filed with the commission and served on the adverse parties. The dates so fixed, unless otherwise ordered at said time, shall allow to the respective parties the following periods of time within which to file with the commission and serve their respective briefs on the adverse parties, to wit: To the complainant, thirty days from the date of the conclusion of the testimony; to the defendants and interveners, fifteen days after the specific date fixed for the complainant; and to complainant for reply brief, ten days after the date fixed for the defendant or interveners. If the briefs of the respective parties are not filed and served on the date fixed for each, the case will stand submitted without briefs on the date that defendants' or interveners' briefs are due. Briefs of parties not filed as aforesaid, and served on the respective parties on or before the specific dates fixed therefor, will not be received or considered by the commission.

"All briefs shall be filed with the secretary and shall be accompanied by notice showing service upon the adverse parties, and 15 copies of each brief shall be filed for the use of the commission.

"The parties will be required to comply strictly with this rule, and, except for good cause shown, no extension of time will be allowed. Applications for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application rests, which must be filed with the commission at least five days before the time for filing such briefs has expired.

"Applications for oral argument may be made by any party at the close of the taking of the testimony or at the time of the filing of his brief. Such application can be granted only by the commission."

298. Parties Complainant.

For changes in Section 13 of the Act by the amendment of 1910, see *supra*, p. 26.

A voluntary association of individuals may properly bring a complaint before the commission.⁹

Where a complainant dies while his claim is pending before the commission, reparation will be awarded to his personal representative.¹⁰

299. Must Damage to Complainant Appear?

See amendments to Section 13, *supra*, p. 27.

Although in cases involving public rights the question of damage to the shipper bringing it to the attention of the commission is immaterial,¹¹ where a shipper seeks to redress an individual grievance, he must make out a case in order to entitle him to relief.¹²

300. Investigations by the Commission of its Own Motion.

Under Sections 13 and 15 as amended in 1910, the commission has the same authority and powers in investigations instituted of its own motion as in case of formal complaints.¹³

301. Parties Defendant.

The commission will not pass on the reasonableness of a through joint rate unless all the carriers, parties to it, be joined as defendants.¹⁴

302. Pleadings.

Although a complaint before the commission need not follow any prescribed form, it must specifically aver sufficient to make out

(9) California Com. Assn. v. Wells Fargo & Co., 16 I. C. C. Rep. 458, 463, (991).

West End Imp. Cl. v. Omaha & C. B. R. Co., 17 I. C. C. Rep. 239, (1083).

(10) Springer v. El Paso & S. W. R. Co., 17 I. C. C. Rep. 322, (1104).

(11) Indianapolis Fr. Bur. v. Penna. R. Co., 15 I. C. C. Rep. 567, 571, (850).

(12) Copper Queen Co. v. Baltimore & O. R. Co., 18 I. C. C. Rep. 154, (1204).

(13) See text of act as amended, *supra*, pp. 27 and 28.

(14) Bulte Co. v. Chicago & O. R. Co., 15 I. C. C. Rep. 351, 365-366, (813).

Moise v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 550, 552, (1013).

Bayou City Mills v. Texas & N. O. R. Co., 18 I. C. C. Rep. 490, (1292).

a cause of action.¹⁵ In *Sanford v. Western Exp. Co.*,¹⁶ Commissioner Clark said:

"The commission does not feel that it can assume to pass generally upon all the rates to which reference was made by complainant. In administering the law, and in its endeavor to effectuate justice to all concerned, the commission must be observant of the weight to be given evidence adduced before it. It supplements the records by using official information before it in reaching conclusions as to the reasonableness of rates and in determining questions presented to it for decision. Where rates generally are attacked all parties should have an opportunity to be put on notice of the charges which must be met. In these complaints specific rates were attacked, and beyond a decision in those respects we can not legitimately go. In the general adjustment of rates individual instances of seeming discrepancy are noticed, which are unexplainable from a cursory examination, but often, when such instances are made the subject of specific complaint, circumstances and conditions before unknown are brought out tending to justify the apparently unreasonable relation. The commission consequently moves with great caution in condemning a rate or practice, and does so only when the facts before it amply warrant such action."

The commission does not consider itself bound by the amount of damages claimed, and has awarded a sum in excess of the amount stated in the petition.¹⁷

Points not raised by the complaint or answer are not considered to be before the commission for adjudication.¹⁸

(15) *Kiser Co. v. Central of Ga. R. Co.*, 17 I. C. C. Rep. 430, 442, (569-B).

Florida Assn. v. Atlantic C. L. R. Co., 17 I. C. C. Rep. 552, 554-555, (710-B).

(16) 16 I. C. C. Rep. 32, 36, (879).

(17) *Wollenberger v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 596, 598, (855).

(18) See *Florida Assn. v. Atlantic C. L. R. Co.*, 17 I. C. C. Rep. 552, 567-568, (710-B).

Kindel v. New York, N. H. & H. R. Co., 15 I. C. C. Rep. 555, 557, (849-A).

The commission will not pass on reparation claimed on a shipment made after complaint filed where no amendment has been offered including it.¹⁹

The complainant must make out a complete cause of action by facts proved,²⁰ or must show some violation of the Act or facts sufficiently strong to justify the commission in making an investigation of its own motion.²¹

Dilatory proceedings are condemned.²²

Where complainant does not appear at the hearing, the case will be dismissed for want of prosecution.²³

303. Evidence.

Tariffs on file speak for themselves and may not be modified by the opinions of experts.²⁴

304. Evidence—Production of Books and Papers.²⁵

Montague v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 72, 77, (1043).

But see New York Cent. & H. R. R. Co. v. I. C. C., 168 Fed. 131, 138-139, (702-B).

(19) Bluff City Co. v. St. Louis, I. M. & S. R. Co., 16 I. C. C. Rep. 296, (934).

But see U. S. v. Adams Exp. Co., 16 I. C. C. Rep. 394, (966), where, with defendant's consent, subsequent shipments were included in the order of the Commission.

(20) Des Moines v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 73, 79, (1181).

(21) Des Moines v. Chicago G. W. R. Co., 18 I. C. C. Rep. 98, 104, (1187).

(22) See Tyson Co. v. Aberdeen & A. R. Co., 17 I. C. C. Rep. 330, (1107).

(23) Taylor v. Missouri Pac. R. Co., 15 I. C. C. Rep. 165, (767).

Wakita Co. v. Atchison, T. & S. F. R. Co., 15 I. C. C. Rep. 533, (844).

Maxwell v. Adams Exp. Co., 15 I. C. C. Rep. 609, (861).

Isbell Co. v. Michigan Cent. R. Co., 15 I. C. C. Rep. 616, (863).

Bedingfield v. Wisconsin Cent. R. Co., 16 I. C. C. Rep. 93, (891).

Guthrie v. Chicago, R. I. & P. R. Co., 16 I. C. C. Rep. 425, (977).

Quammen Co. v. Chicago, M. & St. P. R. Co., 19 I. C. C. Rep. 110, (1357).

(24) Newton Co. v. Chicago, B. & Q. R. Co., 16 I. C. C. Rep. 341, 346, (948).

See also *supra*, §250a.

(25) See American Bankers' Assn. v. American Exp. Co., 15 I. C. C. Rep. 15, 24, (735).

307. Damages Before the Commission.

Under a recent decision by the commission it awards no damages beyond "rate damages," amounts based exclusively on differences in rates.²⁶ General damages are not therefore recoverable before the commission, although resulting from a violation of the act.

308. Same Subject—Nature of Claim for Damages for Excessive Charges.

Where a complainant dies while the complaint is pending, reparation has been awarded to his personal representative.²⁷

309. Same Subject—Actions for Damages for Excessive Tariff Rates Must be Begun Before the Commission.

The courts have no power to award damages to a shipper who has paid tariff rates, or otherwise to alter the published schedules.²⁸

The commission may award damages in such a case²⁹ both for exacting excessive rates and for unjust discrimination,³⁰ damages before the commission being limited, however, to rate damages.³¹

The courts have power to construe a tariff.³²

(26) *Joynes v. Penna. R. Co.*, 17 I. C. C. Rep. 361, (1112).

. *American Works v. Illinois Cent. R. Co.*, 18 I. C. C. Rep. 212, (1225).
Cf. *Kiel Co. v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 242, (1238).
But see *Hillsdale Co. v. Penna. R. Co.*, 19 I. C. C. Rep. 356, 372, (1383).
See also *supra*, §280, for a discussion of constitutional questions involved in this ruling.

(27) *Springer v. El Paso S. W. R. Co.*, 17 I. C. C. Rep. 322, (1104).

(28) See *supra*, §§240, 241, *infra*, §340.

(29) *Farley v. Chicago, M. & St. P. R. Co.*, 15 I. C. C. Rep. 602, (857).
Arkansas Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 95, (892).
Kansas City Hay Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 100, (893).

Allen v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 293, (933).

(30) *Washer Co. v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 147, 155-156, (763).

(31) See *supra*, §§280 and 307.

(32) *Hite v. Central R. of N. J.*, 166 Fed. 976, (764-A).
Central R. of N. J. v. Hite, 171 Fed. 370, (764-B).

310. Same Subject—Practice Where the Carrier Concedes the Relief Prayed for.

In a number of cases the carrier has conceded the relief prayed for, and the complaint has been dismissed on motion of the complainant, no award of reparation being involved.³³

By Administrative Ruling No. 200, (June 22nd, 1909) the commission altered somewhat its practice with reference to cases on the Informal Docket, the modifications being quoted in the note.³⁴ The commission here stated that it had so far been liberal in disposing of cases informally, in order to assist the carriers in disposing of old claims, but that after September, 1909, it expected to draw the lines more closely. It desired to have it understood that its action in informal cases must not be construed as an award of reparation without a distinct finding by the commission, and that its orders in informal cases were to be regarded as formal orders as fully in all respects as its orders in formal cases.

(33) *Rentz Bros. v. Chicago, B. & Q. R. Co.*, 15 I. C. C. Rep. 7, (732).
Montgomery Fr. Bur. v. Western of Ala. R. Co., 15 I. C. C. Rep. 199, (779).

Southern Kas. Cl. v. Atchison, T. & S. F. R. Co., 15 I. C. C. Rep. 604, 605, 606, (858), (859), (860).

Pyro Cl. v. United States Exp. Co., 16 I. C. C. Rep. 37, (880).

Watson Co. v. Lake S. & M. S. R. Co., 16 I. C. C. Rep. 124, (896).

Zellerbach Co. v. Atchison, T. & S. F. R. Co., 16 I. C. C. Rep. 128, (898).

Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co., 16 I. C. C. Rep. 142, (902).

Cf. Mill Creek Coal Co. v. Coal & Coke Co., 17 I. C. C. Rep. 306, (1099).

(34) 1. In cases where the through rate in effect at the time of the shipment was in excess of the sum of the local rates the order, instead of requiring the maintenance of an absolute rate for one year from the date of the filing of the application, shall require the absolute rate to be maintained for a period of only six months from the date upon which the reduced through rate equaling the sum of the locals became effective; this rule shall apply, however, only in cases where the local rates in question are to and from some well-recognized and established basing point or line, such as the Mississippi, Missouri, and Ohio Rivers, Chicago, Minnesota Transfer, Buffalo, etc. In all other cases the present practice shall be enforced.

2. Where there is a natural geographical relation between the point involved and other points, which relation the carrier has theretofore expressed in its tariffs by grouping that point with the other points,

Where the carrier has at first denied the justice of the complaint on informal hearing, making a formal hearing necessary, the commission has refused to dispose of the case as an informal complaint on the carrier's subsequent admission of its validity.³⁵

In a great many recent cases involving reparation, the carrier has conceded the relief prayed for and an order awarding reparation or other appropriate relief has been issued by the commission. These cases are given in the note.³⁶

either with respect to rates on the commodity question or with respect to rates on other commodities, or with respect to class rates, the order may require the maintenance of the group relation for one year from the date of the application instead of requiring an absolute rate to or from the point in question.

3. Where the rates on a product of a raw material have had a definite relation to the rates on the raw material, and that relation has been temporarily disturbed and subsequently restored, the order may control the relation for one year instead of fixing an absolute rate on the product.

4. Where a carrier is compelled to charge a higher rate than was intended because of an error in printing a tariff, the one-year clause may be omitted only where the error is specifically called to the attention of the Commission within ninety days after the tariff containing the error has been filed.

(35) *Stone Co. v. Chicago, B. & Q. R. Co.*, 16 I. C. C. Rep. 30, (677).

(36) *Red Wing Co. v. Chicago, M. & St. P. R. Co.*, 15 I. C. C. Rep. 47, (744).

Beekman Co. v. St. Louis, I. M. & S. R. Co., 15 I. C. C. Rep. 274, (799).

Bowman Co. v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 277, (800).

Darbyshire Co. v. El Paso & S. W. R. Co., 15 I. C. C. Rep. 451, (827).

Sunderland Bros. v. Chicago & N. W. R. Co., 16 I. C. C. Rep. 212, (920).

Hewitt v. Chicago & N. W. R. Co., 16 I. C. C. Rep. 431, (979).

Mineral Point Co. v. Wabash R. Co., 16 I. C. C. Rep. 440, (983).

Swift v. Texas & Pac. R. Co., 16 I. C. C. Rep. 442, (985).

Otis Co. v. Chicago G. W. R. Co., 16 I. C. C. Rep. 502, (1003).

Aetna Co. v. Chicago, M. & St. P. R. Co., 17 I. C. C. Rep. 165, (1062).

Davenport Co. v. Chicago, B. & Q. R. Co., 17 I. C. C. Rep. 193, (1072).

Vanness v. Lehigh & H. Co., 17 I. C. C. Rep. 307, (1100).

Henderson Co. v. Illinois Cent. R. Co., 17 I. C. C. Rep. 573, (1155).

Delray Co. v. Michigan Cent. R. Co., 18 I. C. C. Rep. 247, (1235).

Rotsted Co. v. Chicago & N. W. R. Co., 18 I. C. C. Rep. 257, (1240).

Where a reduction in the rate had been made subsequent to the shipment in question:—

Jones Co. v. Boston & A. R. Co., 15 I. C. C. Rep. 226, (785).

U. S. v. New York, P. & N. R. Co., 15 I. C. C. Rep. 233, (789).

- Smith v. Missouri & N. A. R. Co., 15 I. C. C. Rep. 449, (826).
 Milwaukee Co. v. Chicago, M. & St. P. R. Co., 15 I. C. C. Rep. 468, (830).
 Tulley Co. v. Fort S. & W. R. Co., 16 I. C. C. Rep. 28, (876).
 Noble v. St. Louis & S. F. R. Co., 16 I. C. C. Rep. 186, (913).
 Bluff City Co. v. St. Louis, I. M. & S. R. Co., 16 I. C. C. Rep. 296, (934).
 Stone Co. v. Northern Pac. R. Co., 16 I. C. C. Rep. 313, (937).
 DuPont Co. v. New York, N. H. & H. R. Co., 16 I. C. C. Rep. 351, (951).
 Pepperill Co. v. Texas So. R. Co., 16 I. C. C. Rep. 353, (952).
 Snook v. Atchison, T. & S. F. R. Co., 16 I. C. C. Rep. 356, (953).
 Philip v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 418, (972).
 Okerson v. Penna. R. Co., 18 I. C. C. Rep. 127, (1196).
 Menafee v. Vicksburg S. & P. R. Co., 19 I. C. C. Rep. 117, (1360).

Greater charge for less distance:—

- Williamson v. Oregon Short Line, 15 I. C. C. Rep. 228, (787).
 Keich Co. v. St. Louis & S. F. R. Co., 15 I. C. C. Rep. 230, (788).
 Neufeld v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 26, (875).
 Thomas v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 364, (956).
 Sunderland Co. v. Chicago & N. W. R. Co., 16 I. C. C. Rep. 433, (980).
 Cf. Milwaukee Falls Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 217, (922).

Lower Rate from Adjacent Points:—

- Central Com. Cl. v. Mobile J. & K. C. R. Co., 15 I. C. C. Rep. 25, (736).
 American Co. v. Erie R. Co., 16 I. C. C. Rep. 320, (941).
 Central Co. v. Atchison, T. & S. F. R. Co., 17 I. C. C. Rep. 166, (1063).

Mistake in the Tariff:—

- Grand Rap. Co. v. Pere Marquette R. Co., 15 I. C. C. Rep. 68, (750).
 Goddard Co. v. Cleveland, C., C. & St. L. R. Co., 16 I. C. C. Rep. 298, (935).
 Windsor Co. v. Colorado & S. R. Co., 16 I. C. C. Rep. 349, (950).
 American Bk. v. Chicago, M. & St. P. R. Co., 17 I. C. C. Rep. 11, (1032).
 Saner Co. v. Texas & N. O. R. Co., 17 I. C. C. Rep. 290, (1092).
 Colorado Co. v. Chicago, B. & Q. R. Co., 18 I. C. C. Rep. 401, (1278).
 Henderson Co. v. Louisville & N. R. Co., 18 I. C. C. Rep. 538, (1308).
 Felton Co. v. Union Pac. R. Co., 19 I. C. C. Rep. 63, (1348).
 But see Armour Car Lines v. Southern Pac. Co., 17 I. C. C. Rep. 461, (1132).

Through Rate Exceeding Combined Locals:—

- Wells Co. v. Grand Rap. & I. R. Co., 16 I. C. C. Rep. 339, (947).
 U. S. v. Adams Exp. Co., 16 I. C. C. Rep. 394, (966).
 Empire Works v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 401, (969).
 Noble v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 420, (974).
 Carlin's Sons Co. v. Baltimore & O. R. Co., 16 I. C. C. Rep. 477, (994).

311. Same Subject—Proof Necessary to Sustain Action for Unreasonable Charges.

In order to sustain such an action it must appear that the rate complained of has actually been paid to the carrier; the commission has held that it cannot authorize the carrier to accept less than its tariff rates.³⁷

A verified statement should be given from complainant's books, showing the date and weight of each shipment, the route over which it moved, the date when payment was made, and the amount of the claimed overcharge.³⁸

Blodgett Co. v. Chicago, M. & St. P. R. Co., 17 I. C. C. Rep. 587, (1160).

Crombie v. Atchison, T. & S. F. R. Co., 18 I. C. C. Rep. 57, (1176).

Southern Co. v. Atlantic C. L. R. Co., 18 I. C. C. Rep. 275, (1250).

Misrouting Cases:—

Carstens Co. v. Oregon, R. & N. Co., 15 I. C. C. Rep. 482, (835).

Carstens Co. v. Oregon R. & N. Co., 17 I. C. C. Rep. 125, (1052).

Delray Co. v. Michigan Cent. R. Co., 18 I. C. C. Rep. 248, (1236).

Cameron v. Houston. E. & W. T. R. Co., 19 I. C. C. Rep. 146, (1367).

No Commodity Rate in Force:—

Hutcheson Co. v. Central of Ga. R. Co., 16 I. C. C. Rep. 523, (1007).

Alphons Co. v. Vandalia R. Co., 16 I. C. C. Rep. 600, (1026).

Monarch Co. v. Chicago, R. I. & P. R. Co., 17 I. C. C. Rep. 1, (1029).

Lower Rate by Competing Line and Agreement to Protect Same:—

Ottumwa Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. Rep. 368, (958).

Export Rate Exceeding Domestic:—

Newark Co. v. Pittsburgh, C. C., & St. L. R. Co., 16 I. C. C. Rep. 291, (932).

Combination Commodity Rate Less Than Through Class Rate Charged:—

Barrett Co. v. Graham & M. Tr. Co., 16 I. C. C. Rep. 399, (968).

(37) *Males v. Lehigh & H. Co.*, 17 I. C. C. Rep. 280, 282, (1088).

See also *Peale v. Central R. of N. J.*, 18 I. C. C. Rep. 25, 33, (1171).

U. S. v. Denver & R. G. R. Co., 18 I. C. C. Rep. 7, (1164).

Rosenblatt & Sons v. Chicago & N. W. R. Co., 18 I. C. C. Rep. 261, (1242).

But cf. *Old Dom. Co. v. Penna. R. Co.*, 17 I. C. C. Rep. 309, 312, (1101).

(38) *Acme Co. v. Lake S. & M. S. R. Co.*, 17 I. C. C. Rep. 30, 35, (1038).

Cf. also *Murphy v. New York C. & H. R. R. Co.*, 17 I. C. C. Rep. 457, 459, (1131).

312. Same Subject—Excessive Charges Need not Have Been Paid Under Protest.³⁹

313. Same Subject—Damages Not Awarded in Every Case Where Rates are Declared Unreasonable.

In *Nebraska-Iowa Grain Co. v. Union Pac. R. Co.*,⁴⁰ Commissioner Bragg said:

"This commission is an administrative body. The rates, regulations, and practices which it establishes within its jurisdiction become rules of action which may and must enter into the business dealings of this country. It may be necessary to change from time to time these rulings as varying conditions require, but they should never be changed except upon due notice to the public, which is affected by them, and it would be altogether intolerable if the change could be made retroactive."

313a. Same Subject—The Commission Will not Award Reparation Merely Because the Carrier Agrees to Such an Award.

The commission will not authorize a refund on tariff charges

(39) *Penna. R. Co. v. International Coal Mining Co.*, 173 Fed. 1, 7, (660-B).

National Ref. Co. v. Atchison, T. & S. F. R. Co., 18 I. C. C. Rep. 389, (1275).

Nollenberger v. Missouri Pac. R. Co., 15 I. C. C. Rep. 595, 596, (855).

In the latter case it was intimated, however, that failure by a shipper to object to a rate might, under some circumstances, make it amount to a breach of good faith subsequently to deny its reasonableness.

(40) 15 I. C. C. Rep. 90, 93, (351-C).

See also *Naylor v. Lehigh Val. R. Co.*, 15 I. C. C. Rep. 9, (733).

Pilant v. Atchison, T. & S. F. R. Co., 15 I. C. C. Rep. 178, (774).

Winston-Salem v. Norfolk & W. R. Co., 16 I. C. C. Rep. 12, (873).

Kalispell Co. v. Great Nor. R. Co., 16 I. C. C. Rep. 164, (909).

Big Blackfoot Co. v. Northern Pac. R. Co., 16 I. C. C. Rep. 173, (910).

Metropolitan Co. v. Ann Arbor R. Co., 17 I. C. C. Rep. 197, (1074).

Kindelon v. Southern Pac. Co., 17 I. C. C. Rep. 251, 253-254, (1084).

Harmon Co. v. Lake S. & M. S. R. Co., 17 I. C. C. Rep. 394, (1120).

Mountain Ice Co. v. Delaware, L. & W. R. Co., 17 I. C. C. Rep. 447, 450, 456, (806-B).

Rose v. Boston & A. R. Co., 18 I. C. C. Rep. 427, (1286).

Compare also *Morse Co. v. Chicago, M. & St. P. R. Co.*, 15 I. C. C. Rep. 334, (546-B).

Admin. Rul. No. 205, (June 29th, 1909).

or the payment of reparation, merely on an admission by the carrier that the charge exacted was unreasonable, and without ordering the maintenance of the lower rate for the future, where, from the evidence, the commission is unable to reach an independent conclusion that the rate exacted was in fact unreasonable.⁴¹ In *Holley Co. v. Yazoo & M. V. R. Co.*,⁴² Commissioner Prouty said:

"This commission cannot undertake by its orders to ratify the agreement of parties as to past or future rates. Before it makes an order for reparation or establishes a rate for the future it must have some opinion of its own upon the reasonableness of the rate involved."

In *Swift & Co. v. Chicago & A. R. Co.*,⁴³ Commissioner Clark said:

"* * * * * The commission can not and will not accept as conclusive any stipulation of parties as to the reasonableness of a rate or a transportation regulation. * * * * * The willingness of a shipper to receive, and of a carrier to pay, reparation upon certain traffic or under certain rates can be approved by this commission only under a clear and decisive showing of facts which would lead the commission to award that reparation in opposition to that carrier's wishes, and under which it would also award reparation to all others who might have shipped during the same period under the same rate and under substantially similar circumstances and conditions."

In *Alphons Co. v. Southern R. Co.*,⁴⁴ Commissioner Cockrell said:

"We can not predicate our conclusion that a rate is unrea-

(41) *DeCamp Bros. v. Southern R. Co.*, 16 I. C. C. Rep. 144, (903).
Pabst Co. v. Chicago, M. & St. P. R. Co., 17 I. C. C. Rep. 359, (1111).
Pacific Co. v. Chicago, M. & St. P. R. Co., 17 I. C. C. Rep. 373, (1113).
Wabash Co. v. Wabash R. Co., 18 I. C. C. Rep. 91, (1183).
 See also *Ames Co. v. Rutland R. Co.*, 16 I. C. C. Rep. 479, (995).
Crowell Co. v. Texas & Pac. R. Co., 17 I. C. C. Rep. 333, (1108).
Armour Car Lines v. Southern Pac. Co., 17 I. C. C. Rep. 461, (1132).
International Co. v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 222, (1227).

(42) 15 I. C. C. Rep. 436, 437, (823).

(43) 16 I. C. C. Rep. 426, 428, 429, (978).

(44) 16 I. C. C. Rep. 584, 586, (1023).

sonable upon the mere fact that a carrier agreed to lower a rate and did lower it after the movement began and then canceled the rate after the movement discontinued. It seems to us that such a rate on its face is in the form of a rebate giving special privileges to a certain shipper who has special knowledge of the lowering of the rate and furnishes no benefit to the general public."

In *Omaha Com. Cl. v. Southern Pac. Co.*,⁴⁵ Commissioner Harlan said:

"An order granting affirmative relief, and particularly in a case in which reparation is awarded, must always be predicated upon a definite conviction, drawn from the record or from our own investigations, or from both, that the rate exacted on the shipments embraced within the complaint was an unreasonable rate."

In exceptional cases, however, the commission has awarded reparation without an order for the maintenance of the lower rate.⁴⁶

314. Same Subject—Measure of Damages for Unreasonable Charges.

Under its present rulings the commission awards no reparation beyond rate damages.⁴⁷

Speculative damages may not be recovered.⁴⁸

316. Same Subject.

Charges in excess of tariff rates may be recovered before the commission,⁴⁹ and should properly be refunded by the carrier

(45) 18 I. C. C. Rep. 53, 56, (1175).

(46) *Hydraulic Brick Co. v. Vandalia R. Co.*, 15 I. C. C. Rep. 175, (772).

(47) See *supra*, §280.

(48) *Washer Co. v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 147, (763).
Allender v. Chicago, B. & Q. R. Co., 16 I. C. C. Rep. 103, (894).
 See also *American Works v. Illinois Cent. R. Co.*, 18 I. C. C. Rep. 212, (1225).

(49) *Laning-Harris Co. v. St. Louis & S. F. R. Co.*, 15 I. C. C. Rep. 37, (740).

Carstens Co. v. Butte A. & P. R. Co., 15 I. C. C. Rep. 432, (821).

Wells Co. v. St. Louis, S. W. R. Co., 18 I. C. C. Rep. 175, (1210).

without an order.⁵⁰ Delay in refunding overcharges has been strongly censured by the commission.⁵¹

318. Same Subject—Measure of Damages in Cases of Discrimination.

The decision of the court in *International Coal Mining Co. v. Pennsylvania R. Co.*,⁵² cited in note (112), p. 433, has been affirmed by the Circuit Court of Appeals, but without discussing the point referred to.⁵³

As to the measure of damages in discrimination cases, see *American Works v. Illinois Cent. R. Co.*⁵⁴

320a. Same Subject—Measure of Damages for Misrouting.

The commission has held that carriers misrouting freight are liable not merely for such damages as could reasonably have been anticipated to have resulted from the carrier's action, but for all charges in excess of what would have accrued if the misrouting had not occurred.⁵⁶

Demurrage will not ordinarily be included in damages awarded for misrouting, but may be in special cases.⁵⁷

321. Same Subject—Failure to Post Rates.

In two recent cases the commission has awarded damages for failure to post rates, it appearing that damage to complainant resulted directly from this cause.⁵⁸

(50) *Isbell Co. v. Michigan Cent. R. Co.*, 15 I. C. C. Rep. 616, (863).
Royal Co. v. Chicago G. W. R. Co., 18 I. C. C. Rep. 255, (1239).

(51) *Tyson Co. v. Aberdeen & A. R. Co.*, 17 I. C. C. Rep. 330, (1107).

(52) 162 Fed. 996, (660).

(53) 173 Fed. 1, (660-B).

(54) 18 I. C. C. Rep. 212, (1225).

(56) *Kile v. Deepwater R. Co.*, 15 I. C. C. Rep. 235, 238, (790).

(57) *Cressey v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 132, 134, (1198).

(58) *Kiel Co. v. Chicago, M. & St. P. R. Co.*, 18 I. C. C. Rep. 242, (1233).

Canadian Co. v. Chicago, R. I. & P. R. Co., 19 I. C. C. Rep. 108, (1356).

Compare also *Canadian Co. v. Chicago, R. I. & P. R. Co.*, 18 I. C. C. Rep. 509, (1299).

322. Same Subject—Interest and Counsel Fees.

The commission has no power to award a counsel fee in reparation cases, that power being limited to the courts.⁵⁹

As to the power of the courts to allow counsel fees, see *Riverside Mills v. Atlantic C. L. R. Co.*⁶⁰

323. Parties Entitled to Damages.

The decision in *Nicola Co. v. Louisville & N. R. Co.*,⁶¹ cited in note (126), p. 437, has been affirmed by the commission in a number of cases.⁶²

324. Parties Responsible for Damages.

A carrier filing a joint tariff is responsible for the rates named therein, although the connecting line does not concur.⁶³

All carriers parties to a through rate are responsible for the entire damages suffered by a shipper.⁶⁴

In misrouting cases the commission usually specifies the carrier responsible and directs the payment of reparation by such carrier without recourse to any other.⁶⁵ Where, however, in

(59) *Washer Co. v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 147, 152, (757).

(60) 168 Fed. 990, (760-B).

(61) 14 I. C. C. Rep. 199, 207-209, (685).

(62) *Lindsay Bros. v. Grand R. & I. R. Co.*, 15 I. C. C. Rep. 182, 183, (775).

Beekman Co. v. St. Louis, I. M. & S. R. Co., 15 I. C. C. Rep. 274, (799).

Indianapolis Fr. Bur. v. Penna. R. Co., 15 I. C. C. Rep. 567, 571, (850).

Kindelon v. Southern Pac. Co., 17 I. C. C. Rep. 251, 255, (1084).

Omaha Com. Cl. v. Anderson & S. R. Co., 18 I. C. C. Rep. 532, 537, (1307).

Sunnyside Co. v. Denver & R. G. R. Co., 19 I. C. C. Rep. 20, (1339).

Gamble Co. v. St. Louis & S. F. R. Co., 19 I. C. C. Rep. 114, 116, (1359).

(63) *Black Horse Co. v. Illinois Cent. R. Co.*, 17 I. C. C. Rep. 588, 592, (1161).

(64) *Davenport Co. v. Chicago, B. & Q. R. Co.*, 17 I. C. C. Rep. 193, (1072).

(65) See *Duluth Log Co. v. Minnesota & S. R. Co.*, 15 I. C. C. Rep. 192, (777).

Washington Co. v. Chicago, R. I. & P. R. Co., 15 I. C. C. Rep. 219, (783).

Noble v. St. Louis & S. F. R. Co., 16 I. C. C. Rep. 186, 187, (913).

Cameron v. Northern Pac. R. Co., 18 I. C. C. Rep. 560, (1316).

such cases the rate by the route over which the shipment moved is found to be unreasonable, all the carriers, parties to it, may be held responsible for the excess charge.⁶⁶

A railroad is not responsible for the independent charges of a compress company for storage or for putting patches on cotton bales.⁶⁷

In a case where a carrier not a party to the record was found to be responsible for damages, the commission issued a statement that such carrier should participate in their payment.⁶⁸

325. Limitation of Actions.

An informal complaint tolls the running of the statute.⁶⁹ Such a claim, in order to be effective for this purpose, need not specifically allege a violation of the act, or formally set out a cause of action, it being sufficient if it describe the shipments, state the rate exacted and what would have been a reasonable rate, and contain copies of the claim papers.⁷⁰

(66) *Williar v. Canadian N. P. R. Co.*, 17 I. C. C. Rep. 304, (1098).

(67) *Anderson v. Chicago, R. I. & P. R. Co.*, 18 I. C. C. Rep. 340, (1260).

(68) *Jones v. Kansas City So. R. Co.*, 17 I. C. C. Rep. 468, 470, (1135).

(69) *Folmer v. Great Nor. R. Co.*, 15 I. C. C. Rep. 33, (739).

Venus v. St. Louis, I. M. & S. R. R. Co., 15 I. C. C. Rep. 136, (758).

Woodward v. Louisville & N. R. Co., 15 I. C. C. Rep. 170, 172, (771-A).

Beekman Co. v. St. Louis, M. & S. R. Co., 15 I. C. C. Rep. 274, (799-A).

Hartman Co. v. Wisconsin Cent. R. Co., 15 I. C. C. Rep. 530, (842).

Duluth Log Co. v. Minnesota & S. R. Co., 15 I. C. C. Rep. 627, 630, (866).

Kaye Co. v. Minnesota & I. R. Co., 16 I. C. C. Rep. 285, (929).

Carten v. Baltimore & O. R. Co., 16 I. C. C. Rep. 477, (994).

Otis Co. v. Chicago G. W. R. Co., 16 I. C. C. Rep. 502, (1003).

Southern Co. v. Illinois Cent. R. Co., 17 I. C. C. Rep. 300, (1096).

Fathauer v. St. Louis, I. M. & S. R. Co., 18 I. C. C. Rep. 517, 520, (1302).

See also *Rehberg v. Erie R. Co.*, 17 I. C. C. Rep. 508, 510, (1145), as to the effect of allowing an informal complaint to stand for two years without further action.

(70) *Memphis Fr. Bur. v. St. Louis S. W. R. Co.*, 18 I. C. C. Rep. 67, (1179).

Gamble Co. v. St. Louis & S. F. R. Co., 19 I. C. C. Rep. 114, (1359).

Fisk v. Boston & M. R. Co., 19 I. C. C. Rep. 299, (1379).

See also, as tolling the statute, *Acme Co. v. St. Louis & S. F. R. Co.*, 18 I. C. C. Rep. 376, (1269).

Henley v. Chicago, M. & St. P. R. Co., 18 I. C. C. Rep. 382, (1272).

National Ref. Co. v. Atchison, T. & S. F. R. Co., 18 I. C. C. Rep. 389, (1275).

The commission has held that a cause of action accruing within a year prior to August 28th, 1906, was not barred on August 28th, 1907, but had two years from the time it accrued.⁷¹

In one case the commission held a cause of action which would appear to have accrued on July 11th, 1906, to be barred July 11th, 1908.⁷²

In re When Does a Cause of Action Accrue Under the Act,⁷³ the commission said:

"In complaints for the recovery of damages caused by charges of rates unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, the cause of action accrues when the payment is made. In any other complaints for the recovery of damages for alleged violations of the interstate commerce laws of which this Commission has jurisdiction, the cause of action accrues when the carrier does the unlawful act or fails to do what the law requires, on account of which damages are claimed."

In two later cases it held that the cause of action accrued when the freight was paid,⁷⁴ and that this was presumed to be when the shipment was delivered.⁷⁵

In *Blinn Lumber Co. v. Southern Pacific Co.*,⁷⁶ the majority of the commission (Commissioners Prouty and Cockrell dissenting)

(71) *Woodward v. Louisville & N. R. Co.*, 17 I. C. C. Rep. 9, 10, (771-B).

Kile v. Deepwater R. Co., 15 I. C. C. Rep. 235, (790).

Nollenberger v. Missouri Pac. R. Co., 15 I. C. C. Rep. 595, 598, (855).

(72) *West Texas Co. v. Texas & Pac. R. Co.*, 15 I. C. C. Rep. 443, (825).

But see *Nicola v. Louisville & N. R. Co.*, 14 I. C. C. Rep. 199, 206, (685).

Nollenberger v. Missouri Pac. R. Co., 15 I. C. C. Rep. 595, 598, (855).

(73) 15 I. C. C. Rep. 201, 204, (781).

(74) *Kile v. Deepwater R. Co.*, 15 I. C. C. Rep. 235, 236, (790).

Nollenberger v. Missouri Pac. R. Co., 15 I. C. C. Rep. 595, 597, (855).

(75) *West Texas Co. v. Texas & Pac. R. Co.*, 15 I. C. C. Rep. 443, 444, (825).

(76) 18 I. C. C. Rep. 430, 435, (1287).

Blodgett Co. v. Chicago, I. & S. R. Co., 18 I. C. C. Rep. 439, (1288), accord.

held that "the period of two years within which this commission is allowed to award damages for acts arising under violations of the provisions of this act begins to run at the time when the shipment is delivered and when it becomes the legal duty of the carrier to collect its lawful charges."

Where the original petition does not claim reparation, and such a claim is introduced by an amendment, the date of filing the amendment is regarded as the date of filing the claim for the purpose of reckoning the time of the running of the statute.⁷⁷ Where a claim was withdrawn on the promise of the carrier not to plead the statute, the commission held that it might subsequently be reinstated *nunc pro tunc* after the statutory period had elapsed, but that additional claims, not originally presented, might not be added to it.⁷⁸ An amendment which adds new claims for reparation will not be permitted after the period of the statute has run.⁷⁹

It has been held that the limitation provision in the Hepburn act applies only to reparation proceedings before the commission and not to those begun before the courts.⁸⁰

The amendment of 1910 struck out the words "*Provided*, That claims accrued prior to the passage of this act may be presented within one year."

326. Orders of the Commission.

Disobedience of the commission's order does not amount to contempt.⁸¹

An order of the commission is not invalid because it fails to specify the time for which it is to continue in force; in the absence of such specification it will continue in force for two years whether it be an affirmative or a negative order; an order also

(77) *Virginia Co. v. St. Louis, I. M. & S. R. Co.*, 18 I. C. C. Rep. 1, 3, 5, (1163).

(78) *Werner Co. v. Illinois Cent. R. Co.*, 17 I. C. C. Rep. 388, (1118).

(79) *East St. L. Co. v. St. Louis & S. F. R. Co.*, 17 I. C. C. Rep. 582, (1159).

(80) *Lyne v. Delaware & L. R. Co.*, 170 Fed. 847, (769).

(81) See *Washer Co. v. Missouri Pac. R. Co.*, 15 I. C. C. Rep. 147, 155, (757).

may be conditional, permitting the carrier to make certain regulations rendering the order less stringent in its effect.⁸²

As to how specific an order must be to be enforceable, see *New York Cent. & H. R. R. Co. v. I. C. C.*⁸³

As to the proper practice of carriers in conforming to the commission's orders, see Administrative Ruling, No. 130, (Jan. 4th, 1909).

The amendment of 1910 altered Section 16 so as to provide for service of the commission's orders on a designated agent of the carrier at Washington "or in such other manner as may be provided by law."⁸⁴

(82) *New York Cent. & H. R. R. Co. v. I. C. C.*, 168 Fed. 131, 134-136, (702-B).

(83) 168 Fed. 131, 135-136, (702-B).

(84) See *supra*, p. 38.

CHAPTER XXVI.

CIVIL PROCEEDINGS IN THE COURTS.

330. In General—Changes Made by the Amendment of 1910.

The amendment of 1910 made extensive changes in the practice in connection with the court proceedings under the act. The most important of these changes were the creation of the Commerce Court and the regulation of the procedure therein, and the provision that proceedings in reparation cases after order of the commission might be brought in State courts as well as in the Federal Circuit Court.

The provisions defining the jurisdiction and regulating the practice in the Commerce Court are contained in the first six sections of the Mann-Elkins act, *supra*, p. 53 *et seq.* This court has now exclusive jurisdiction over the following classes of cases:

“First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

“Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

“Third. Such cases as by section three of the act entitled ‘An act to further regulate commerce with foreign nations and among the States,’ approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

“Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled ‘An act to regulate commerce,’ approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.”¹

(1) Mann-Elkins Act, Section 1, *supra*, pp. 53-54.

331. Enforcement of Orders of the Commission—Conclusiveness of Findings of Fact by the Commission.

Under the recent Federal decisions, the findings of the commission on questions of fact would appear to be binding on the courts. In *Philadelphia & R. R. Co. v. I. C. C.*,² Judge Buffington said:

"The fixing of rates as an incident to the regulation of commerce, being a non-judicial function, it follows that when the legislative branch has acted therein, or by proper delegation of its powers has acted through the executive branch, such action, provided no legal, constitutional, or natural right has been violated, is not to be suspended or vacated by a court."

In *Peavey v. Union Pac. R. Co.*,³ Judge Sanborn said:

"The Interstate Commerce Commission is an administrative tribunal, and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the Circuit Courts to relieve from orders of the commission which deprive complainants of their property without due process of law or take it without just compensation in violation of the fifth amendment to the Constitution, from orders which are beyond the limits of the power delegated by the acts of Congress to the commission and from orders which, though in form within its delegated power, evidence so unreasonable an exercise of it that they are in substance beyond it."

In *Southern Pac. Co. v. I. C. C.*,⁴ Judge Ross said:

"It is well established law that the fixing of the rates to be charged by public service corporations is a legislative func-

(2) 174 Fed. 687, 688-689, (1057-B).

(3) 176 Fed. 409, 418, (351-B).

(4) 177 Fed. 963, 964, (667-C).

See also *New York Cent. & H. R. R. Co. v. I. C. C.*, 168 Fed. 131, 139-140, (702-B).

And cf. *Morrisdale Coal Co. v. Penna. R. Co.*, 176 Fed. 748, 758-762, (1152).

The decision and opinion in *Chicago, R. I. & P. R. Co. v. I. C. C.* 171 Fed. 680, (697-B), would appear to be in conflict with the foregoing decision.

tion, from which it necessarily follows that when Congress, as it did, conferred upon the Interstate Commerce Commission the power, in causes properly brought before it, to determine what are and should be reasonable rates to be charged by the carriers of interstate commerce, its action in the premises is conclusive on the courts, subject always of course to the inhibitions of the Constitution of the United States, which protect such companies, like everybody else, against confiscatory rates."

Where, however, a finding of the commission, although on its face one of fact, is evidently based on a misconstruction of the law, the court will review and correct it.⁵

For an article on the "Force and Effect of the Orders of the Interstate Commerce Commission," see 23 *Harvard Law Review*, 12 (H. T. Newcomb).

332. Same Subject—Questions of Reasonableness of Rates and Discriminations—Questions of Fact.

The question as to whether or not a given practice is reasonable or gives rise to an unjust discrimination is one of fact.⁶

335. Same Subject—Practice Where Ground for Enforcing the Commission's Order Appears Which has not been Passed on by the Commission.

To cases cited in note (23), p. 449, add *Southern Ry. Co. v. St. Louis H. & G. Co.*⁷

336. Issuance of Injunctions Without Previous Investigation by the Commission.

As to whether or not the Commerce Court has power to enjoin violations of the act without previous investigation by the commission there would appear to be grave doubt, in view of a recent decision by the Supreme Court.⁸

A court has power, irrespective of the Act, to require a common

(5) *I. C. C. v. Northern Pac. R. Co.*, 216 U. S. 538, (936 B).

(6) *Morrisdale Coal Co. v. Penna R. Co.*, 176 Fed. 748, 750, (1152).

(7) 214 U. S. 297, (384-D).

(8) *Baltimore & O. R. Co. v. N. S. ex rel. Piteairn Coal Co.*, 215 U. S. 481, (495-C).

carrier to perform its common law duty to receive and carry articles tendered to it.⁹

337. Enjoining Proposed Schedules.

For recent cases holding that the courts have no power to enjoin proposed schedules, see *supra*, §§ 242-243.

A bill to enjoin a proposed schedule does not depend on diverse citizenship and prior to the amendment of 1910, must, therefore, have been filed in the district of which the defendant was an inhabitant.¹⁰ The amendment prescribed the city of Washington as the place for the filing of all notices and processes in proceedings before the commission or the Commerce Court (Mann-Elkins Act, Section 6, Par. 2, *supra*, p. 62).

338. Injunctions to Restrain the Enforcement of the Orders of the Commission.

It has been held that the right to maintain a suit to enjoin, set aside, annul or suspend an order of the commission was not limited to those who were parties to the proceeding before the commission on which its order was based and that any one whose rights of property were in danger of irreparable injury from the order might apply to the Federal court for relief.¹¹

The real defendants have been permitted to intervene in proceedings and enjoin the commission's order, with provision so as not to delay the proceedings.¹²

The amendment of 1910 provides that interested parties may intervene in proceedings before the Commerce Court (*supra*, pp. 60, 61).

339. Mandamus Proceedings.

In *Baltimore & Ohio R. Co. v. U. S. ex rel. Pitcairn Coal Co.*,¹³

(9) See *Crescent Liquor Co. v. Platt*, 148 Fed. 894, (1906).

Louisville & N. R. Co. v. Cook Co., 172 Fed. 117, (1909).

(10) *Vanderslice Co. v. Missouri Pac. R. Co.*, (unreported), (728).
Imperial Colliery Co. v. Chesapeake & O. R. Co., 171 Fed. 589, (944).
Atlantic C. L. R. Co. v. Macon Grocery Co., 166 Fed. 208, (712-B).
Macon Grocery Co. v. Atlantic C. L. R. Co., 215 U. S. 501, (712-C)

(11) *Peavey v. Union Pac. R. Co.*, 176 Fed. 409, 417, (351-D).

(12) *Delaware, L. & W. R. Co. v. I. C. C.*, 169 Fed. 894, (707-C).

(13) 215 U. S. 481, (495-C).

Morrisdale Coal Co. v. Penna. R. Co., 176 Fed. 748, (1152), accord.

the Supreme Court held that since the amendment of 1906, the courts have no original jurisdiction, under Section 23, to regulate the distribution of coal cars among competing mines so as to prevent unjust discrimination, such regulation being delegated by Congress exclusively to the commission. In the course of the opinion Mr. Justice White said:

“Construing the provisions of § 23 in the light of and in harmony with the amendments adopted in 1906, the remedy afforded by that section, in the cases which it embraces, must be limited either to the performance of duties which are so plain and so independent of previous administrative action of the commission as not to require a prerequisite exertion of power by that body, or to compelling the performance of duties which plainly arise from the obligatory force which the statute attaches to orders of the commission, rendered within the lawful scope of its authority until such orders are set aside by the commission or enjoined by the courts.”

340. Damages Before the Courts.

The amendment of 1910 permits an action for the recovery of damages, after an order of the commission, either in the Federal Circuit Court “or in any State court of general jurisdiction having jurisdiction of the parties.”¹⁴

Where the regular published rate is charged by the carrier a court has no power to award damages because it finds the rate to be unreasonable, but in a proper case between citizens of different States it may construe an ambiguous provision in a published tariff.¹⁵

As to what preliminary proceedings before the commission are necessary to give the courts jurisdiction over damage claims, see *supra* §§ 240, 280.

As regards the election of remedies in damage cases under Section 9, see *Lyne v. Delaware, L. & W. R. Co.*;¹⁶ and compare

(14) See Section 16, *supra*, p. 37.

(15) *Central R. of N. J. v. Hite*, 166 Fed. 976, (764-A).
Hite v. Central R. of N. J., 171 Fed. 370, (764-B)

(16) 170 Fed. 847, 848, (769).

Baltimore & Ohio Railroad Co. v. U. S. ex rel., Pitcairn Coal Co.,¹⁷ and Morrisdale Coal Co. v. Penna. R. Co.¹⁸

The provision in Section 8 giving the court power to award counsel fees has been held to be constitutional, and has been applied to a proceeding under Section 20 of the act.¹⁹

No damages may be recovered before the courts which were not claimed before the commission.²⁰

The limitation provision of Section 16 has been held to apply only to proceedings before the commission and not to those before the courts.²¹

342. Appeals from the Circuit Court.

Appeals from the rulings of the Commerce Court are regulated by Section 2 of the Mann-Elkins act.²²

As to whether an appeal by the Government is constitutional in actions for penalties under the act, compare *United States v. Illinois Cent. R. Co.*,²³ a decision under the safety appliance act holding that such a writ of error is proper.

Although the expediting provisions of Section 16, as amended in 1906, applied to hearings on preliminary injunctions, it was held not to cover an appeal from an order refusing a preliminary injunction; the provision requiring a certificate was also held to apply only where all the judges could not agree on a final decision and not to an order refusing an injunction, entered by a majority.²⁴

(17) 215 U. S. 481, (495-C).

(18) 176 Fed. 748, (1152).

(19) *Riverside Mills v. Atlantic C. L. R. Co.*, 168 Fed. 990, (760-B)

(20) *Western N. Y. & P. R. Co. v. Penn. Ref. Co.*, 137 Fed. 343, 355-356, (155-E).

(21) *Lyne v. Delaware, L. & W. R. Co.*, 170 Fed. 847, (769).

(22) *Supra*, p. 58.

(23) 170 Fed. 542, (1909).

(24) *Southern Pac. Term. Co. v. I. C. C.*, 166 Fed. 134, (691-B).
See also amendment of 1910 to Expediting Act, *supra*, p. 71.

CHAPTER XXVII.

PENAL AND CRIMINAL PROCEEDINGS.

343. Construction of the Penal Provisions of the Act.

See *U. S. v. New York Cent. & H. R. R. Co.*¹

344. Analysis of Penal and Criminal Provisions of the Act.

The amendment of 1910 altered the language of Section 10 of the Act, particularly the third paragraph, but did not change the general nature of the offense created.²

This amendment also added the following offenses to those enumerated in the text:

OFFENSE.	PENALTY.
(o) Failure or refusal by the carrier to comply with the terms of any order or regulation made by the commission under Section 6. ³	\$500 for each offense and \$25 for each day's continuance.
(p) Failure or omission by a carrier to furnish a written statement of a rate between specified points on proper request by a shipper, or misstatement of such rate, resulting in the shipper's damage. ⁴	Penalty of \$250.
(q) Disclosure by carrier, its agents, etc., of information concerning property tendered for shipment. ⁵	Penalty of \$1,000.

Prior to the Hepburn amendment, although the failure to file rates was an offense against the act, transportation without first filing rates was not. Paragraph 7 of Section 6 made it illegal to

(1) 212 U. S. 509. 515, (571-B).

(2) See *supra*, pp. 19-22.

(3) See paragraph 10, of Section 6, *supra*, p. 16.

(4) See paragraph 11, of Section 6, *supra*, p. 17.

(5) See paragraphs 6 and 7, of Section 15, *supra*, pp. 33-34.

transport commodities without first filing rates and under Section 10 this became a penal offense.⁶

345. Departure from Tariff Rates.

The Elkins act is not unconstitutional because it applies to individual carriers as well as to corporations, and deprives the former of the presumption of innocence,⁷ nor because it makes a corporation guilty of a crime requiring a specific intent for its commission.⁸

In order to constitute the offense, by a shipper, of accepting less than published rates, there must be on file a fixed rate from which the alleged departure occurs; a mere maximum rate is not such a rate, nor is a rate which is subject to change by a classification committee; and where an indictment charged acceptance of less than a given through joint rate and the proof showed only the sum of the two local rates, this was held to be a fatal variance.⁹

The Elkins act applies to rebates paid after it went into effect, although on account of transportation rendered prior to its passage.¹⁰

In *U. S. v. Bunch*,¹¹ Judge Trieber said:

"In the opinion of the court this act, in so far as it applies to the shipper, creates three distinct offenses: First, the soliciting of a rebate, concession or discrimination in respect of the transportation of property in interstate or foreign commerce; second, the acceptance of any such rebate, concession, or discrimination; third, the receipt of such rebate, concession, or discrimination."

(6) *U. S. v. Illinois Term. R. Co.*, 168 Fed. 546, (817).

See also *Atchison, T. & S. F. R. Co. v. U. S.*, 170 Fed. 250, 256, (662-B).

(7) *New York Cent. & H. R. R. Co. v. U. S.*, 212 U. S. 481, 496, (429-B).

(8) *New York Cent. & H. R. R. Co. v. U. S.*, 212 U. S. 481, 494, (429-B).

(9) *U. S. v. Standard Oil Co.*, 170 Fed. 988, 1002, (530-C).

(10) *New York Cent. & H. R. R. Co. v. U. S.*, 212 U. S. 500, 505-506, (429-C).

(11) 165 Fed. 736, 738, (730).

From the opinion in this case it would seem that in case of the first two offenses above set out, actual receipt of the rebate was not necessary.¹²

As to whether in case of the offense of giving "any other advantage" actual transportation is necessary, see *New York Cent. & H. R. R. Co. v. U. S.*¹³

346. Same Subject—In What District Prosecuted?

Although under the present law the offense of transporting without filing rates may be committed in any district through which the transportation may have been conducted, under the law as it stood prior to the amendment of 1906 the offense of wilfully failing to file rates could be committed only in the District of Columbia.¹⁴

347. Same Subject—Number of Offenses.

In case a rebate is paid on account of several shipments or carloads, the number of offenses cannot exceed the number of settlements made by the carrier,¹⁵ but each payment of a rebate constitutes a separate offense, though made in pursuance of the same agreement,¹⁶

348. Same Subject—Necessity of Intent or Guilty Knowledge.

As to the importance of intent in the prosecution of a carrier under the Elkins act, see *Atchison, T. & S. F. R. Co. v. U. S.*¹⁷

349. Same Subject—Parties Guilty Under the Act.

An employee who secures a pass and gives it to one not enti-

(12) See 165 Fed., p. 738.

(13) 212 U. S. 500, 505, (429-C).

(14) *New York Cent. & H. R. R. Co. v. U. S.*, 166 Fed. 267, (471-B).

(15) *U. S. v. Stearns Salt Co.*, 165 Fed. 735, (729).

U. S. v. Bunch, 165 Fed. 736, (730-A).

U. S. v. Standard Oil Co., 170 Fed. 988, 995-997, (530-C).

Standard Oil Co. v. U. S., 179 Fed. 614, 626, (572-B).

(16) *New York Cent. & H. R. R. Co. v. U. S.*, 212 U. S. 481, 497-498, (429-B).

(17) 170 Fed. 250, (662-B).

See also *Standard Oil Co. v. U. S.* 179 Fed. 614, 628, (572-B).

tled to travel on it, is guilty as accessory to the offense of obtaining free transportation.¹⁸

351. Same Subject—Effect of Participation in Rates by Carriers Not Parties to Tariffs in Question.

A carrier participating in a through rate may be guilty of giving a rebate from such rate although it has not itself filed and published the rate.¹⁹

352. Discrimination and Free Passes.

Under the anti-free pass provisions the "use" of a free pass, forbidden by the act, is not confined to its use in riding, the language being broad enough to forbid a use of the pass in selling it to one not authorized to use it and thus assisting in his illegally obtaining free transportation.²⁰

353. False Billing, Classification, Weighing, etc.

For changes in Section 10 of the Act by the amendment of 1910, see *supra*, pp. 19-22.

The commission has said that a shipper fraudulently manipulating a "two-for-one" rule may be guilty under Section 10.²¹

356. Necessary Allegation in Indictments for Various Offenses.

As to the necessity of alleging actual payment in an indictment for receiving rebates, see *U. S. v. Bunch*.²² In such a case

(18) *U. S. v. Martin*, 176 Fed. 110, (1144).

See also *U. S. v. Williams*, 159 Fed. 310, (601).

(19) *U. S. v. New York Cent. & H. R. R. Co.*, 212 U. S. 509, (571-B), (reversing (571) cited in note 48, p. 473).

But see as to water lines, *Mutual Transit Co. v. U. S.*, 178 Fed. 664, (1221), *supra*, §42.

(20) *U. S. v. Martin*, 176 Fed. 110, (1144).

U. S. v. Williams, 159 Fed. 310, (601).

(21) *Indianapolis Fr. Bur. v. Cleveland, C., C. & St. L. R. Co.*, 16 I. C. C. Rep. 254, 260, (927).

(22) 165 Fed. 736, (730).

it need not be alleged that the rebate was given or received in pursuance of a prior agreement.²³

In an indictment for accepting less than tariff rates it is not necessary specifically to allege the granting of a "concession," it being sufficient to specify that the published rate was a certain figure and that the defendant charged and received less than that amount.²⁴

360. Appeals in Criminal Cases.

As to an appeal to the Supreme Court under the act of March 2nd, 1907,²⁵ see *U. S. v. New York Cent. & H. R. R. Co.*²⁶

(23) *U. S. v. Bunch*, 165 Fed. 736, (730).

(24) *Atchison, T. & S. F. R. Co. v. U. S.*, 170 Fed. 250, 256, (662-B).
See also *Standard Oil Co. v. U. S.*, 179 Fed. 614, 619, (572-B).

(25) C. 2564, 34 Stat. 1246.

(26) 212 U. S. 509, (571-B).

PART III.

DIGEST OF DECISIONS CONSTRUING THE ACT.

I. DECISIONS ON APPEAL FROM CASES DIGESTED IN VOLUME II.

183-F.—Receivers' & Shippers' Association of Cincinnati et al. v. Cincinnati, N. O. & T. P. Ry. Co. et al. 18 I. C. C. Rep. 440. (Feb. 17, 1910).

Complaint of unreasonable rates from Chicago and Cincinnati to Southern territory and of preference of northeastern points.

The object of this proceeding was to have the Commission establish, under the power conferred by the Hepburn Act, the rates found reasonable in Cincinnati Freight Bureau v. Chicago, N. O. & T. P. Ry. Co. (183-A). It appeared that none of the same carriers served Cincinnati and Chicago as served the eastern points. A majority of the stock of the Cincinnati, N. O. & T. P. Ry. Co., however, was owned by the Southern Railway. It appeared that the relation in rates between the east and the west, here complained of, had been in effect for almost thirty years, and that in recent years the freight handled by the western lines had not fallen off. Complainants contended that in establishing the rate relationship, the Southern Railway & Steamship Association had arbitrarily divided up the traffic between eastern and western railroads. Complainants also contended that the decision of the Commission in the former case was controlling in this. It appeared that the evidence before the court in proceedings to enforce the Commission's order in the former case had been considerably different from that presented to the Commission and from the evidence taken in these proceedings the Commission found that it had not been the object of the members of the Southern Railroad & Steamship Association to discriminate against the west. The Cincinnati, N. O. & T. P. Ry. Co. was apparently securing large returns on the capital invested, but this was partly due to the fact that the Southern Railway threw traffic to it which it would not have done had the Southern been entirely independent.

Held, (Prouty, C.), (a) that "plainly there can be no such thing as judicial estoppel in the proceedings of this Commission since its orders are not judgments nor is it a judicial body;"

(b) that in the 15 years elapsing since the former case was disposed of, conditions had materially changed, and the decision in the former case was not controlling here;

(c) that it did not appear that the parties to the original rates had intended unduly to discriminate against the west, or that there was such undue discrimination at the present time;

(d) that there could not be an undue preference, within the meaning of the Act, by a carrier which did not reach both the preferred point and that alleged to be prejudiced;

(e) that under the decision in the Commodities Clause case, the Southern Railway and the Cincinnati, N. O. & T. P. Ry. Co. were distinct entities in spite of the stock ownership involved;

(f) that it did not appear that the rates from Cincinnati were unreasonable to the extent alleged in the complaint, but they should be somewhat reduced, to figures indicated;

(g) that as to Chicago the complaint should be dismissed.

Clements and Lane, C. C., concurred in the reduction ordered by the Commission, but were of the opinion that the reduction should have been considerably greater and more in harmony with the previous decision by the Commission.

351-C.—Nebraska-Iowa Grain Co. et al. v. Union Pacific R. Co.
15 I. C. C. Rep. 90. (January 6, 1909.)

Demand for reparation for refusal to pay to complainants an elevation allowance at Omaha and Council Bluffs, although paying the same to other elevators similarly situated.

This proceeding was brought on behalf of several elevator companies to obtain payment of the elevation allowance of 1¼c. provided by the defendant's tariffs from June 27, 1906, to June 1, 1907, and of ¾c. per 100 lbs. from the latter date until June 29, 1908. The defendants declined to pay these charges on the ground that by the decision *In re Allowances to Elevators* (315-A), and in *St. Louis Traffic Bureau vs. Chicago Burlington & Quincy R. Co.*, (698), the Commission had held that the payment of such charges was illegal, as affecting a discrimination in favor of Peavey & Co., and in favor of the grain interests at the Missouri River over those at St. Louis. The tariffs under which the elevation charge was allowed had provided that such charge was not payable unless the cars were returned to the Union Pacific within 48 hours. It appeared, however, that a number of the elevators in question were not situated on the tracks of the Union Pacific and many shipments were made in cars of companies other than the Union Pacific. The rule under which the elevators and the railroads were working provided that cars of companies other than the Union Pacific should be returned to such companies, and some of the complaints were situated on the lines of switching railroads which were bound to return cars other than the Union Pacific cars to the company to which they belonged. These switching railroads were not in any way bound to return foreign cars to the Union Pacific Company. The result of this condition was that it was impossible for many elevator companies to comply with the

condition imposed by the Union Pacific to the effect that no allowance would be paid unless cars were returned to it within 48 hours.

Held, (Bragg, C.), (a) that since the Commission had expressly sanctioned the payment of the elevation allowance to Peavey & Co., during the period in which these shipments were made, it could not, without stultifying itself, make any ruling which would condemn as unlawful their payment to others during the period which they had been expressly sanctioned by its decisions;

(b) that as regards cars returned within 48 hours, payment should be made to the complainants of the allowance provided by the tariff during that period;

(c) that as applied to cars owned by companies other than the Union Pacific and delivered to industries not on the Union Pacific tracks, the 48-hour rule worked an unjust discrimination and was hence void;

(d) that even though as applied to Union Pacific cars and to industries on the Union Pacific tracks the 48-hour condition was a reasonable one, yet since it necessarily operated to produce a discrimination as against industries off the line of the Union Pacific and using foreign cars, the 48-hour rule was wholly invalid;

(e) that the complainants were entitled to the payment of an elevation allowance equal to that which would have accrued to them if the 48-hour provision had not been included in the tariff.

Order accordingly, awarding the specified damages to the 5 complainants.

351-D.—Peavey & Co. et al. v. Union Pacific R. Co.

Diffenbaugh et al. v. Interstate Commerce Commission (Chicago & Alton R. Co. et al. interveners). 176 Fed. 409. C. C. W. D. Mo. W. D. (March 3, 1910.)

Demurrer to bills to suspend and annul the order of the Commission in 351-B.

It appeared that the Union Pacific Railroad had its eastern termini at Omaha, and Kansas City. The Chicago Great Western and other roads had their western termini at the same points. Other roads had lines running from Kansas and Nebraska grain fields through Missouri River points to eastern destinations. In order that the Union Pacific and the Chicago Great Western participate in the transportation of this grain from points of origin to the seaboard, it was necessary that the grain be elevated at the Missouri River points. In view of this situation, the Union Pacific had requested Peavey to erect elevators at Omaha and Council Bluffs, and Peavey had expended a great deal of capital in such erection. The order of the Commission complained of, issued June 29, 1908, had been based, not on the consideration that the $\frac{3}{4}$ c. elevation allowance was more than just compensation for the service or exceeded the cost thereof, but because, by the use of the elevators, Peavey & Co. secured, at the

same time with the elevation, the commercial advantages of cleaning, clipping, inspecting, mixing and grading their own grain, and thus secured an advantage over other shippers who did not elevate grain which they themselves owned. A number of interested parties, carriers and grain dealers, intervened as complainants in bringing the bill to enjoin the enforcement of the Commission's order. St. Louis interests also complained that the allowance at Omaha worked an undue discrimination against St. Louis shippers. The Union Pacific and Chicago Great Western did not have any termini at St. Louis. Reparation was claimed for the refusal by the railroads to make the allowance.

Held, (Sanborn, C. J.), (a) that the Act contained no limitation of the parties who might maintain suits to enjoin, set aside, annul or suspend an order of the Commission to those who were parties to the proceedings before it upon which the order was based, the proceeding in the Court being not an appeal but a plenary suit in equity;

(b) that the advantage of cleaning, clipping, inspecting, mixing and grading grain was no part of transportation and not a matter over which the Commission had jurisdiction;

(c) that "the Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the Statutes is not reviewable by the Courts;"

(d) that the circuit courts have power, however, to relieve from orders of the Commission depriving complainants of their property without due process of law, or taking title without just compensation in violation of the fifth amendment of the Constitution, from orders beyond the limits of the power delegated to the Commission, and from orders which, though in form within its delegated power, evidence so unreasonable an exercise of it as to be in substance beyond it;

(e) that pecuniary advantages derived by shippers from the ownership or use of facilities of trade are attributable to that ownership and not to the transportation of the article shipped, and the consideration and regulation of these advantages are without the scope of the Commission's power;

(f) that the allowance here in question was not a rebate because it was not a concession from the published schedules, but an allowance in accordance with them;

(g) that the presence of the termini of the Union Pacific and Chicago Great Western at Missouri River points rendered conditions at such points substantially different from those at St. Louis;

(h) (semble) that reasonable compensation to shippers for transportation services includes not only the cost of the service, but reasonable reward therefor in addition;

(i) that Peavey & Co. were entitled to recover for elevation services rendered prior to April 9th, 1907, at the rate of 1¼c. per 100 lbs. and

for services rendered since that date at the rate of $\frac{3}{4}$ c. per 100 lbs.

Decree entered accordingly.

See also 1265.

351-E.—Union Pac. R. Co. v. Updike Grain Co. et al. 178 Fed. 223. C. C. A. 8th Cir. (April 18, 1910.)

In error to C. C. D. Nebraska, on judgment for plaintiff in action against Union Pacific Railroad Company to recover damages for discrimination in pursuance of the award by the Commission in 351-C.

The elevators of the defendants in error were not located on the tracks of the Union Pacific and cars coming over the Union Pacific tracks, destined to these elevators, were delivered by a connecting railroad or by the Union Stockyards Company and switched by such other lines to the elevators. The rules of the American Railway Association required cars thus delivered to be returned to the owner if it had direct connection with the switching territory, and under this rule the empty cars belonging to the switching railroad, or to a company having a direct connection with the switching territory, could not be transferred back to the Union Pacific. They could not, therefore, become entitled, under the rules of the latter, to the allowance, by reason of the requirement that all cars on which the allowance was given should be returned to the Union Pacific within forty-eight hours. A part of the damages herein claimed were awarded on account of the failure by the Union Pacific to pay the elevation allowance on cars of the above character. A part, however, was on account of cars returned to the Union Pacific more than 48 hours after delivery. It appeared that 319 cars of this kind had been delivered within 48 hours and 222 after that period had elapsed. The defendants in error contended that the delay was the fault of the switching railroads.

Held, (Sanborn, C. J.), (a) that since the defendants in error could not have complied with the regulation of the Association with regard to cars of the switching or foreign railroads, this regulation, as held by the Commission, was unreasonable and discriminatory, and the damages awarded on account thereof were reasonable and proper;

(b) that the 48-hour rule as applied to Union Pacific cars was designed to effectuate prompt unloading of the Union Pacific cars, and this was necessary to the proper conduct of the business of the company;

(c) that since the 319 cars had been returned to the Union Pacific within 48 hours, and since the switching roads were virtually the agents of the elevators and not of the Union Pacific, the 48-hour regulation as applied to Union Pacific cars was reasonable and the damages on account of the 222 cars delivered after the 48 hours could not be sustained.

Judgment reversed unless the defendants in error remit that portion of the damages awarded on account of the 222 cars.

369-C.

370-B.—*Jenks Lumber Co. v. Southern Ry. Co. et al.* 17 I. C. C. Rep. 58. (June 29, 1909.)

Supplemental proceeding on claims for reparation in 369-A and 370.

It appeared that the parties had presented a written agreement for the approval of the Commission specifying the amounts to be paid to each of 185 complainants.

Held, (Clements, C.), that on examination of the agreement the Commission was satisfied that the terms thereof were consistent with law and the same should be approved and the case retained until adjustments and payments under the agreement had been finally made.

384-D.—*Southern Ry. Co. v. St. Louis H. & G. Co.* 214 U. S. 297. (June 1, 1909.)

Appeal from 384-C.

Held, (Brewer, J.), (a) that since stopping for inspection and re-loading was of some benefit to the shipper and involved some service by and expense to the railway company, the latter was not limited to the actual cost of the privilege, but was justified in receiving some compensation in addition thereto;

(b) that this was especially true because the privilege of reconsignment was in no sense a part of the transportation, but outside thereof;

(c) that as the testimony taken before the Commission was not preserved on the record, this court could not fix the amount which would be a fair and reasonable charge and the case would therefore be remanded to the Circuit Court with instructions to send it back to the Commission for further investigation and report.

Judgment of Circuit Court and Circuit Court of Appeals reversed.

399-F.—*Interstate Commerce Commission v. Stickney.* 215 U. S. 98. (Nov. 29, 1909.)

Appeal from the restraining order entered in 399-D.

Held, (Brewer, J.), (a) that where a terminal charge was in and of itself just and reasonable, it could not be condemned or a carrier compelled to change it on the ground that, taken with prior charges for transportation over the lines of a carrier or of connecting carriers, it made the total charge to the shipper unreasonable;

(b) that in the present case, considered by and of itself, the terminal charge of \$2 per car was reasonable;

(c) that if the prior charges for transportation were unreasonable they should be corrected by proper proceedings against the companies exacting them, and the mere fact that it was more convenient for the Commission to strike at the terminal charge than at the charge for the prior transportation did not justify the present proceedings.

Judgment affirmed. (See also 245-A-I.)

429-B.—*New York Central & H. R. R. Co. v. United States* (No. 1). 212 U. S. 481. (February 23, 1909.)

Error to Circuit Court for Southern District of New York on conviction of the defendant and Pomeroy, its assistant traffic manager, for paying rebates to the American Sugar Co., and others, on shipments of sugar from New York to Detroit, Michigan.

The first count, covering the offering of a rebate, was withdrawn. The other six counts alleged the making and publishing of through tariff rates by the defendant and others, fixing a rate of 23c. per 100 lbs. between the points in question; an arrangement between the defendant's officials and the American Sugar Refining Co. and consignees whereby a rebate should be given of 5c. per 100 lbs.; the presentation of claims for rebates, and the payment of the same. In each count, there was an allegation of the payment of the published rate, and the presentation of the claim for the rebate and a specific sum allowed and paid on account thereof. The defendant was convicted on the last six counts, Pomeroy being sentenced to pay \$1000 on each count and the present plaintiff in error \$18,000 on each count. The evidence established that the concession was allowed to secure the transportation from a water route and to allow the consignees to meet severe competition with other shippers and dealers. The railroad company contended that the Elkins Act was unconstitutional on the ground that it deprived the corporation of the presumption of innocence, a presumption which was part of the due process in criminal prosecutions; that in punishing the corporation, it in reality punished the innocent stockholders, depriving them of their property without due process of law, and that as the agents of a corporation could not legally be authorized to commit a crime, a corporation could not be convicted of a crime of the nature here charged.

Held, (Day, J.), (a) that the Elkins Act was constitutional and that although there are some crimes which in their nature cannot be committed by corporations, there is a large class of offenses, of which rebating under the Federal Statutes is one, wherein the crime consists in purposely doing the things prohibited by statute, and of which corporations can be guilty as well as individuals;

(b) that the objects of the statute are to prevent favoritism, to secure equal rights to all in interstate transportation, and one legal rate to be published and posted and accessible to all alike;

(c) that the Elkins Act was not unconstitutional because it applied to individual carriers as well as to corporations, or because it deprived the individual carrier of the presumption of innocence which the law raised in his favor, since, in the present case, no individual was complaining and since the statute was clearly separable and was constitutional as to corporations, irrespective of its constitutionality when applied to individual carriers;

(d) that without deciding how many offenses are committed in a case where, on each of numerous shipments, a less rate is paid than that prescribed in the tariffs, in a case like the present, where the

full legal rate is paid and the amount of the stipulated rebate is remitted by check to the shipper at short intervals, the offense was complete when the railroad company thus paid the stipulated rebate to the shipper, and each payment constituted a complete offense.

Judgment affirmed.

429-C.—New York Central & H. R. R. Co. v. United States (No. 2).
212 U. S. 500. (Feb. 23, 1909.)

Error to 429.

In the court below the defendant had been sentenced, under the Elkins Act, to pay a fine of \$18,000. The indictment charged the establishment and publication of a tariff rate from New York to Cleveland at 21c. per 100 lbs., an unlawful agreement in November, 1902, for a rebate of 6c. per 100 lbs. on reconsigned sugar and 4c. on sugar transported to Cleveland for local trade. It charged the carriage of sugar under the agreement, payment of the tariff rates, presentation of claims for rebates and payment of the latter on April 3, 1903. Objection was taken also to the form of the indictment, on the ground that it did not set forth with sufficient definiteness the elements of the offense charged.

Held, (Day J.), (a) that the Elkins Act was constitutional on the ground stated in *New York Central & H. R. Co. v. United States*, (429-B.)

(b) that the Elkins Act did not refer alone to the transportation of the property, although this was an essential element of the offense, but the thing aimed at was the giving or receiving of a rebate "whereby the property shall be transported at less than the rates named in the published tariffs;"

(c) that the giving of the rebate was complete and the offense committed when a part of the legal rate already paid had been refunded.

(d) that the Elkins Act applied to rebates paid after it went into effect, although the property was transported before the passage of that Act;

Judgment affirmed.

450-C.—Great Northern Ry. Co. v. United States. 155 Fed. 945.
C. C. A. 8th Cir. (Sep. 23, 1907.)

In error to 450-A.

Held, (Van Devanter, C. J.), (a) that the repealing section of the Hepburn Act did not repeal section 1 of the Elkins Act so as to leave no provision of law for the prosecution and punishment of offenses against the Elkins Act in cases where prosecutions were not pending in the courts of the United States at the time of the appeal;

(b) (semble) that offenses not "knowingly" committed prior to

June 29, 1906, and not indicted prior thereto could not be prosecuted thereafter.

Judgment affirmed.

450-D.—Wisconsin Central Ry. Co. et al. v. United States et al.
169 Fed. 76. C. C. A. 8th Cir. (March 15, 1909).

Error to 450-A.

In this proceeding the railway company and its general and assistant freight agents had been indicted for granting rebates to the Spencer Grain Co. Each of the 17 counts of the indictment charged shipments from Minneapolis to Milwaukee over defendants' line and payment of freight charges according to legal rates of $7\frac{1}{2}$ c. per 100 lbs., published and filed, and rates of $\frac{1}{2}$ c. per bushel on grain shipped. The defendants contended that the refund was in payment of services performed and expenditures incurred in elevating grain, etc. The tariffs did not indicate that the elevation charge was absorbed as part of the rate from Minneapolis to Milwaukee. It appeared that the consignees were the agents of the Spencer Grain Co., and that they received the consignments of grain, paid freight thereon to the railway company and afterwards sold the grain for the account of the grain co. Thereafter, the grain company presented to the railway company vouchers to secure the refunding of the elevation charge in accordance with a pre-existing agreement, showing the receipted freight bills paid by the consignees in Milwaukee.

Held, (Adams, C. J.), (a) that there was sufficient evidence that the railway company had actual knowledge that the freight had been paid by the consignees acting for the grain company, showing a rebate from charges paid by the grain company;

(b) that there was no error in proceedings in the court below.

Judgment affirmed.

471-B.—New York Central and Hudson River R. Co. v. United States. 166 Fed. 267. C. C. A. 2d Cir. (Dec. 15, 1908.)

Appeal from 471.

Held, (Noyes, C. J.), (a) that under the law as it existed prior to the Amendment of 1906, the offense of wilfully failing to file rates with the Commission was committed in Washington and jurisdiction was in the District of Columbia only, so that the District Court for the Western District of New York had no jurisdiction;

(b) (semble) that under Section 6 of the Act as amended in 1906, it was an offense to transport without a filed rate as well as to fail to file a rate, and under the statute as it now stands, prosecution might be instituted in any district through which the transportation may have been conducted.

Judgment reversed.

495-C.—Baltimore & Ohio R. Co. v. United States ex rel. Pitcairn Coal Co. 215 U. S. 481. (Jan. 10, 1910.)

Error to C. C. A. 4th Cir., from 495-B.

The opinion reviewed the conditions surrounding the shipment of bituminous coal from the Monongah Division of the Baltimore & Ohio Railroad Company and the method of car distribution there in force.

Held, (White, J.), (a) that "the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission and not subject to be judicially enforced at least until that body, clothed by the Statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions;"

(b) that the controversy here in question was controlled by the considerations governing the ruling in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.* (454);

(c) that to permit the Court, by the use of mandamus proceedings, to regulate the distribution of coal cars before proceedings to this end were had before the Commission would tend to introduce the same confusion into the administration of the law which the construction of the Act adopted in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, *supra*, was designed to prevent;

(d) that "construing the provisions of §23 in the light of and in harmony with the amendments adopted in 1906, the remedy afforded by that section, in the cases which it embraces, must be limited either to the performance of duties which are so plain and so independent of previous administrative action of the commission as not to require a prerequisite exertion of power by that body, or to compelling the performance of duties which plainly arise from the obligatory force which the statute attaches to orders of the commission, rendered within the lawful scope of its authority until such orders are set aside by the Commission or enjoined by the courts;"

(e) that there was nothing in the decision in *Southern Ry. Co. v. Tift*, (319-C) qualifying the ruling in the *Abilene* case.

Judgment reversed and case remanded to the Circuit Court with directions to set aside the judgment and enter judgment dismissing the petition.

Mr. Justice Harlan and Mr. Justice Brewer dissented (no dissenting opinion.)

530-C.—United States v. Standard Oil Co. 170 Fed. 988. D. C. N. D. Ill. N. D. (March 10, 1909.)

Rulings of court and charge to jury on new trial in 530-B.

The indictment charged that there was a lawfully established rate over the route from Chappell to St. Louis of 19½c. The proof, however, showed that while the rate from Chappell to East St. Louis was 18c. and that from East St. Louis to St. Louis was 1½c., these were rates by independent carriers. The defendant challenged the array of jurors on the ground that while the City of Chicago and Cook

County contained more than two-thirds of the total population of the district from which the jury was drawn, only three out of 150 jurors resided in Cook County, and a large proportion were farmers or retired farmers. The defendant moved that the government be required to elect not to exceed 36 counts on which it would proceed to trial, on the ground that the evidence showed only 36 payments. The evidence did not clearly show that the rates in question had been posted in two public places at the station where the freight was received. The government endeavored to prove the rate from which the rebate was alleged to have been received by a tariff not complete in itself, and completed only by reference to the "Illinois Classification" by which it purported to be governed. This classification was made by a committee established for that purpose, and it was not clear from the tariff whether the latter referred to the classification in force at the time when the tariff went into effect or to such classification as the committee might make from time to time.

Held, (Anderson, D. J.), (a) that under the circumstances, the panel should be set aside;

(b) that under the ruling of the Circuit Court of Appeals, there could be no more offenses than there had been settlements, so that the government must elect to proceed on not more than 36 counts;

(c) that a tariff which sought to include within it a classification made and changeable by an outside body could not produce such an established rate as to make it the standard under the Act to Regulate Commerce;

(d) that a rate which was merely a maximum rate was not so fixed as to be the standard of charge from which it was illegal to accept a rebate;

(e) that since the indictment charged an established rate of 19½c. and the proof showed no such through or joint rate but merely the sum of two local rates, this constituted a fatal variance;

(f) (semble) that the proof was defective in not showing that the rate in question was posted and published in two public places at the station where the freight was received.

Verdict of not guilty directed on all the counts.

546-B.—Morse Produce Co. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 344. (Feb. 9, 1909.)

Demand for reparation on account of exaction of unreasonable rates on butter and eggs from Granite Falls, Minn., to Chicago, Ill., and points beyond.

In the previous proceeding the complainant had made no demand for reparation. After the decision by the Commission in his favor, he filed this petition, asking for reparation on the basis of the rates established.

Held, (Cockrell, C.), (semble) (a) that the items which had moved prior to March 20, 1906, were barred by the two-year limitation;

(b) that although the Commission clearly had power to award reparation in a case like the present, it did not necessarily follow that, where rates were reduced and maximum rates ordered for the future, the Commission would award reparation on previous shipments on the basis of the rates established;

(c) that in the present case, in view of all the facts, an order for reparation would be denied.

567-B.—Banner Milling Co. v. New York C. & H. R. R. Co. et al. 19 I. C. C. Rep. 128. (June 10, 1910.)

Subsequent to the decision in the above case, the Commission held in *Jennison Company v. Great Northern Ry. Co.* (1190), that rates on flour and other wheat products from Minneapolis to New York were unreasonable as compared with those from Buffalo, and ordered a 1½c. reduction. The above complainants, together with the defendants in the *Jennison* case, filed a petition for rehearing. It appeared that since the decision in the *Banner Milling* case, operating expenses had been increased and competitive conditions had also somewhat altered. It also appeared that either the advance from Buffalo must be permitted or a reduction must be required in all territory west of Buffalo.

Held, (Prouty, C.), that in view of all the circumstances, the wisest course appeared to be to permit the advance from Buffalo to the extent of 1c. per 100 lbs., but that the case would be retained in case any future action by the Commission should become necessary.

569-B.—Kiser Co. et al. v. Central of Ga. Ry. Co. et al. 17 I. C. C. Rep. 430. (Nov. 27, 1909.)

Complaint of unreasonable less-than-carload rail and water rate on boots and shoes from Boston and New York to Atlanta, Ga.

The rate in question was \$1.05. It appeared that prior to February, 1905, these articles were rated first class at rates of \$1.14 rail and water and \$1.26 all-rail, when they were reduced to \$1.05 and \$1.14 respectively, in less-than-carloads. At the same time, the carload rate was reduced from 98c. to 93c. There was also in the tariffs at this time a provision permitting the concentration of less-than-carload shipments. Shortly thereafter, the carload rates were applied to any-quantity shipments, this provision continuing in effect for about three months. In April, 1905, however, the carriers, after numerous conferences, decided to withdraw the any-quantity rate so that less-than-carload shipments would be rated first class, carload shipments to continue at the 93c. rate. Complainants applied to the Circuit Court for an injunction to restrain this advance and the injunction was issued in December, 1907, as reported, 569-A. Subsequently it was found that under the injunction it was impossible to proceed before the Commission, so that the injunction was dissolved in June, 1908, and the restraining order modified so as to permit the estab-

lishment of the advanced rates with a provision that the injunction against the collection of such rates should stand. These rates were thereupon established in September, 1908, and this complaint filed with the Commission immediately afterward. The \$1.05 rate here in question was the regular first class rate. It appeared that certain of the complainants' factories had been built on the strength of the lower less-than-carload rates and that they could not operate under the present rates. Almost all the shipments of boots and shoes to Atlanta were in less-than-carloads and the concentration of less-than-carload shipments at the ports was not feasible. Defendants showed that the revenue from boots and shoes was considerably less than a number of first, second and even third class articles. It appeared from the history of the rate situation that the rates now in force were in a large measure prompted by the retaliatory action of the western lines in meeting and threatening to exceed proposed reductions from the east, and certain of the defendants stated that if it had not been for this, the lower rates would have been allowed to remain in force. Boots and shoes had almost universally been rated first class in several classifications for a long period. The allegations of the petition included Boston, New York and other eastern points as the points from which the rates were complained of.

Held, (Clements, C.), (a) that "although the primary consideration in cases of this nature before the Commission is the reasonableness of the rates involved, through whatever agency established, the practical unification of carriers in increasing their rates may and should properly be taken into account in determining whether an increase is in fact justified or is the result of a concerted action without regard to the justness of the increased rate;"

(b) that the long maintenance of first class rating as applied to boots and shoes was an important consideration, yet this could not negative the rights of shippers for proper adjustment such as demanded by circumstances and conditions and as shown to be *prima facie* reasonable by the voluntary establishment of the carriers;

(c) that in view of the voluntary establishment of carload and any-quantity commodity rates far below the basis of the present rates and of the other considerations surrounding the later withdrawal of such lower rates, the Commission was convinced that the present rates were unreasonable;

(d) that the present less-than-carload rate of \$1.05 was unreasonable and should not exceed 95c.;

(e) that the Commission could not accept such general designations in the petition as a basis for an order enforceable under the law, since such order must be specific and definite either in enumerating particular points or indicating a specifically defined group or territory, and the order to be issued would extend, therefore, only to Boston and New York, with a recommendation, however, that an 89c. rate be established to apply from Baltimore.

Order accordingly.

571-B.—United States v. New York Central & H. R. R. Co. 212 U. S. 509. (Feb. 23, 1909.)

Proceedings under act of Congress of March 2, 1907, Chapt. 2564, 44 Stat. 1246, permitting the Government to bring to the Supreme Court a case in which the court below sustained a demurrer to the indictment, where the judgment involved the construction of a Federal statute upon which the indictment was founded.

Held, (Day, J.), (a) that while criminal statutes are not to be enlarged by construction, yet, like other acts of legislation, they are to receive a reasonable interpretation with a view to effecting the purpose of their enactment;

(b) that participation in a rate filed and published, brings all the participating carriers within the terms of the Act just as if the tariff had been actually published and filed by the participating carrier;

(c) that the court below erred in holding that offenses of the character charged in this indictment could be prosecuted only against the carrier actually filing and charging the joint rate, since under the law, a carrier participating in a through rate was guilty of rebating although it had not itself filed and published the same.

Judgment reversed.

572-B.—Standard Oil Co. of New York v. United States. 179 Fed. 614. C. C. A. 2d Cir. (May 2, 1910).

In error to D. C. W. D. N. Y. on judgment on conviction of receiving concessions from tariff rates.

It appeared that there were two possible routes for petroleum from Olean, N. Y. to Norwood, N. Y.—one way, the fairly direct route by Rochester which the shipments actually took, and the other way, a round-about way by Buffalo. The tariff fixing the 26½c. rate from Olean to Norwood did not specifically designate the route, but contained the following statement: "Route in accordance with agreed percentages and as designated within." There were no agreed percentages by way of Rochester.

Held, (Noyes, C. J.), (a) that the indictment sufficiently specified the offence alleged, it not being necessary to set out all the evidence by which the Government expected to prove receipt of a concession from tariff rates;

(b) that the shipments being on through bills of lading, for continuous carriage, and there being evidence of concert of action among the carriers with respect to the charges, and the interstate movement of the traffic, the latter were operating, under such a common control, management and arrangement as was contemplated by the Act;

(c) that under the tariff filed, the rate was applicable to the Rochester route, that being the most natural one;

(d) that as the evidence showed that defendant knew of the route and rate, it was legally guilty of a wilful departure therefrom by accepting less than the tariff provided for.

Judgment affirmed.

588-B.—Smeltzer v. St. Louis & S. F. R. Co. 168 Fed. 420. C. C. W. D. Ark. S. D. (Feb. 24, 1909.)

On demurrer to complaint in 588.

The ground of demurrer pressed in argument was the want of jurisdiction of the court, the case having been removed from the Circuit Court of Crawford County, Ark. The defendant contended that under the Act, exclusive jurisdiction was conferred on the District and Circuit Courts of the United States or on the Commission, and therefore the State Court had no jurisdiction of the suit, when brought, and therefore acquired none by removal.

Held, (Rogers, D. J.), that since the Carmack Amendment specified no court in which a shipper might recover damages from an initial carrier for losses beyond the latter's line, both the United States and the State Courts had jurisdiction of such an action.

Demurrer overruled.

607-B.—Wyman, Partridge & Co. v. Boston & Maine R. Co. 15 I. C. C. Rep. 577. (March 13, 1909.)

Application for rehearing.

Application was made on March 6, 1909, for a rehearing and a modification of the Commission's order in 607-A, on the ground that the contract for indemnity tendered by the defendant in pursuance of the Commission's order did not give the shipper the same protection he had formerly received under his policy of marine insurance. The Commission discussed the nine particulars in which complainants contended that the contract tendered them was insufficient. With regard to certain of them an order was made directing the carriers to modify the tariffs and bill of lading; and with regard to others, the complainants' position was not sustained. (The details appear too complicated and of not sufficient importance for insertion here.)

623-B.—Goff-Kirby Coal Co. v. Bessemer & L. E. R. Co. et al. 15 I. C. C. Rep. 553. (March 8, 1909.)

The parties having agreed upon \$2500 to be paid in full satisfaction of claims under this case, this settlement was approved by the Commission.

626-B.—Masurite Explosive Co. v. Norfolk & W. Ry. Co. et al. 16 I. C. C. Rep. 530. (June 24, 1909.)

Proceeding to determine whether the Commission intended to establish joint through rates by its order in 626.

It appeared that subsequent to the issuance of the order in question and in pursuance thereof, defendants had established the joint through rates asked for.

Held, (Prouty, C.), that the complaint should be dismissed.

631-C.—Interstate Commerce Commission v. Illinois Central R. Co. 215 U. S. 452. (Jan. 10, 1910.)

Appeal from C. C. U. S. N. D. Ill in 631-B.

The only question involved in this appeal was whether the order of the Commission directing defendant to pro-rate company fuel cars was legal. The conditions surrounding the distribution of coal cars in the bituminous region were reviewed in the opinion, the various reasons for car shortage and the prevalent systems of car distribution noted. The railroads contended: 1st, that the Act had not delegated to the Commission authority to regulate the distribution of company fuel cars in times of car shortage as a means of prohibiting unjust preference and undue discrimination; and 2d, that even if power had been delegated to the Commission by the Act, the order in question was beyond the delegated authority.

Held, (White, J.), (a) that the Court would not at present decide whether, in determining the issue in question, the railroad must be treated as at fault for failure daily to deliver all the cars called for in times of car shortage, since under the facts conceded, it appeared that the carrier's equipment was reasonably adequate to meet all normal conditions and became insufficient only in times of extraordinary circumstances for which it was reasonably impossible to provide;

(b) that to deny that the movement of coal under the conditions here present was commerce, was to deny not only the authority of the Commission to regulate the distribution of the company fuel cars, but also to deny the power of Congress to confer on the Commission authority over that subject;

(c) that to sustain the defendant's first contention would not only relieve the Company from the obligation to take into account its fuel cars in distributing its equipment, but even from considering them for the purpose of capacity rating and would lead to the overthrow of the system of rating prevalent on many railroads;

(d) that the distribution of company fuel cars was subject to the control of the Commission under the Act;

(e) that the power of the Commission to forbid preferences and discriminations did not extend only to practices which were of a character to affect rates, but covered all preferences and discriminations forbidden by Section 3;

(f) that the discriminations and preferences involved in this case arose not merely from the purchase by the defendant of company coal from a particular mine for its fuel supply, but from the failure on the part of the defendant to make an equal and proper distribution of its equipment;

(g) that "the right to buy is one thing and the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things;"

(h) that the fact that an order requiring the counting of company fuel cars would produce a discrimination against the mine from which the company bought its coal and a preference in favor of other mines

inveighed against the expediency of the Commission's order and not against its legality;

(i) that the order of the Commission relative to the distribution of company fuel cars was legal and the court below erred in enjoining the same.

Decree reversed and case remanded for further proceedings in accordance with the opinion.

Mr. Justice Brewer dissented (no dissenting opinion.)

631-D.—Interstate Commerce Commission v. Chicago & A. R. Co.

215 U. S. 479. (Jan. 10, 1910.)

Appeal from C. C. U. S. N. D. Ill. on demurrer to bill to enforce order of the Commission in **631-A**.

The only difference between this case and **631-C** was that in the bill in this case it was alleged that the railroad equipment included 360 steel hopper-bottom coal cars, which, by reason of their extreme height, could be used only for the railroad's fuel supply and therefore never constituted a part of its equipment available for commercial shipments. No proof was made on this point, although the answer called for proof.

Held, (White, J.), that without intimating an opinion as to how far, had the facts alleged as to the hopper cars been established, they would to the extent of such cars have taken this case out of the rule announced in **631-C**, yet in view of the fact that no proof was made, and in consideration of the weight which the law gives to the findings of the Commission as to the existence of unlawful preference, the mere averment of the facts referred to did not cause this case to differ from **631-C**.

Judgment reversed and case remanded for further proceedings in accordance with the opinion.

Mr. Justice Brewer dissented (no dissenting opinion.)

636-B.—American Express Co. et al. v. United States. 212 U. S.

522. (Feb. 23, 1909.)

Appeal from **636**.

The question as stated by Mr. Justice Day in his opinion was as follows: "Does the Interstate Commerce law prohibit express companies from giving free transportation of personal packages to their officers and employes and members of their families, and to the officers of other transportation companies and members of their families in exchange for passes issued by the latter to the officers of the express companies?"

Held, (Day, J.), that although there was perhaps no substantial reason why Congress should not have extended to express companies, their officers, agents and employes, privileges for a free carriage of goods corresponding to those given to the officers, agents and employes of railroad companies in respect to transportation of persons,

yet, since Section 1 of the Hepburn Act by its terms allowed common carriers to give free transportation to such persons for passengers, and did not specify transportation of goods, the Act could not be extended so as to include the latter.

Judgment affirmed.

658-B.—Thompson Lumber Co. et al. v. Illinois Central R. Co.
et al. 18 I. C. C. Rep. 83. (March 7, 1910).

Amended petition praying for reparation in above.

Proof was made of the payment of the 12c. rate found to be unreasonable and the records were carefully checked by the carriers.

Held, (Lane, C.), that reparation should be awarded on the basis of the 10c. rate to the amount specified.

Order accordingly.

660-B.—Pennsylvania Railroad Co. v. International Coal Mining Co.; International Coal Mining Co. v. Pennsylvania Railroad Co. 173 Fed. 1; C. C. A. 3d Cir. (Oct. 6, 1909.)

Appeal by each party from 660.

It appeared that from 1894-1901 the Mining Company had shipped coal from mines in the bituminous region of Pennsylvania to tidewater. The court had excluded evidence as to shipments prior to July 29th, 1898, on the ground that they were barred by the Statute of Limitations. As to shipments from July 29th, 1898, to April, 1899, it appeared that the Mining Company had paid the same rate as other shippers, although all had been given rebates from the tariff rates. As to shipments from April 1st, 1899, to 1901, it appeared that the Mining Company had been charged more than certain other shippers. The railroad sought to justify this by showing that on April 1st, 1899, its tariff rates had been advanced. At this time there were situated on its line a good many shippers who had made contracts to sell coal at a given rate over a series of years, this rate being based on the tariffs then in force. The railroad, believing that its increased rate would be unfair to these shippers, continued to apply the old rates on coal shipped under these contracts. This it did openly, offering the rates to all shippers who had such contracts. It resulted that although contract shippers had been charged a rate on their contract coal lower than the tariff, they had been charged the regular tariff rate on other coal, so that the average rate to the favored shippers on all coal was considerably higher than the rate on the contract coal. The Mining Company claimed to figure its damage on the basis of the contract coal rate, while the railroad contended that even if recovery were had it could only be on the basis of the average rate on all coal. It appeared that the Mining Company's shipments were partly from the Huntington & Broad Top Railroad, which was a separate company from the defendant, but was operated by it. There were no shipments of contract coal from this

railroad. The court submitted to the jury the question as to whether the district served by the Huntington & Broad Top was really part of the general district from which the contract coal was shipped, and the verdict of the jury established that it was. The court restricted the plaintiff's right to recover to the difference between the rate charged the Mining Company and that charged other shippers, declining to consider certain alleged advantages by favored shippers in reference to coal piers and facilities for handling. Such matters, however, were not declared on in the pleadings. Defendant objected that it had not been proved that the higher rate had been paid under protest. The court below had refused to admit evidence of the record of the state court to show a sale of the Mining Company's claim.

Held, (Buffington, C. J.), (a) that the advantage and facilities not being declared on could not be made the basis of damages;

(b) that the court properly left it to the jury as to whether the shipments from the Huntington & Broad Top were from the same district and whether the evidence showed that the Huntington & Broad Top was really part of the Pennsylvania system;

(c) that in a suit to recover damages for overcharges or discrimination, it was not necessary that the plaintiffs paid the freight charges under protest;

(d) that the rejection of the exemplification was not error;

(e) that as regards the rates charged the complainant, less than tariff rates, there was no illegal discrimination shown, although others had also received illegal rebates during the same period;

(f) that the existence of contracts based on lower rates previously in force did not create dissimilarity of circumstances and conditions sufficient to justify special rates on coal shipped under such contracts.

Judgment affirmed.

662-B.—Atchison, Topeka & S. F. R. Co. v. United States. 170 Fed. 250. C. C. A. 9th Cir. (May 5, 1909.)

In error to 662.

It appeared that the shipments in question were made during 1905. At this time the published rate on lime between the points in question was \$3.50 per ton for a minimum carload weight of 40,000 lbs. The defendant had offered to prove that on 66 of the shipments on which the indictments were brought, the full 40,000 pounds had been loaded in the car at the initial point, but on arrival they had been found to contain considerable less than 40,000 pounds, due to loss in transit. The shipper had put in a claim for damages for loss in transit, but had compromised the claim by the allowance on the part of the defendant of the total freight rate for the amount of the deficit, the value of the lime at the initial point being just equal to the freight rate, and the original claim on the part of the shipper being both for

the loss of a freight charge and for the loss of the lime. The trial judge had excluded this evidence, holding that the intention of the shipper was immaterial, and the fact that a less charge was exacted than the tariff rate called for was conclusive of guilt under the Elkins Act.

Held, (Ross, C. J.), (a) that an indictment like that in question need not specifically allege that the defendant granted a "concession" prohibited by the statute if it specified that the published rate was a given amount and the defendant charged and received less than that amount;

(b) that since the Act required a departure from tariff rates to be wilful in order to be illegal, the intent was clearly relevant and was an element of the offense;

(c) that the evidence in question was relevant and admissible as showing absence of the carrier's intent to grant a concession from the established freight rates

Judgment reversed and cause remanded for new trial.

667-B.—Southern Pacific Co. v. Interstate Commerce Commission.
215 U. S. 226. (Dec. 6, 1909.)

On certificate of Judges of the Circuit Court, N. D. Cal.

Suit was brought by the railroads in the Circuit Court to restrain the enforcement of the Commission's order in 667. The case came on for argument before the three Circuit Judges on demurrer by the Commission to the amended bill. The Circuit Judges certified the whole case to the Supreme Court.

Held, (Fuller, C. J.), that for reasons stated in *Baltimore & Ohio R. Co. v. Interstate Commerce Commission* (670-B) the certificate should be dismissed and the case remanded to the Circuit Court with directions to proceed therein in conformity with law.

667-C.—Southern Pacific Co. et al. v. Interstate Commerce Commission. 177 Fed. 963. C. C. N. D. Cal. (Feb. 28, 1910.)

Suit to enjoin the Commission from enforcing its order fixing the rate of \$3.40 per ton on lumber from points in Willamette Valley in Oregon to San Francisco and adjacent points.

The railroad contended that the finding of the Commission that the rate charged was unreasonable and should not exceed \$3.40 per ton was based merely on the conduct of the railroad company and on the fact that the complainants had established their mills and produced the traffic on the basis of the lower rates.

Held, (Ross, C. J.), (a) that "when Congress, as it did, conferred upon the Interstate Commerce Commission the power, in causes properly brought before it, to determine what are and should be reasonable rates to be charged by the carriers of interstate commerce, its action in the premises is conclusive upon the courts, subject of course always to the inhibitions of the Constitution of the

United States, which protect such companies, like everybody else, against confiscatory rates;”

(b) that in the present case the finding of the Commission was not based solely on the fact that the lumber business had been established on the faith of the lower rate, but also on the fact that the \$3.10 rate previously in force had yielded a substantial return to the carriers.

Complaint dismissed.

670-B.—Baltimore & Ohio R. Co. v. Interstate Commerce Commission. 215 U. S. 216. (Dec. 6, 1909.)

Certificate to Supreme Court of the United States under the Expediting Act on division of the Judges of the Circuit Court for the District of Maryland.

A bill in equity had been filed in the court below by the railroad praying for injunction to suspend the order of the Commission in 670. The case was heard before two Circuit Judges and a District Judge appointed by them, but no final decree or judgment had been entered. The court being divided in opinion as to what decree should be entered, made an order that in accordance with the Act of Congress the case be certified for review to the Supreme Court of the United States.

Held, (Fuller, C. J.), (a) that the power of the Supreme Court to entertain original jurisdiction was as defined in the Constitution and could not be enlarged by Congress;

(b) that where the whole proceedings in a case were certified to the Supreme Court from the court below before the entry of any final judgment or decree, the Supreme Court, in assuming jurisdiction, would exercise original jurisdiction and not appellate jurisdiction;

(c) that review by certificate is limited to a certificate made after final judgment on a distinct point of law;

(d) that as in the present case there was no final judgment or decree or any judicial determination upon which an appeal would lie, the order in question must be set aside and the case remanded to the Circuit Court with directions to proceed in conformity with law.

680-B.—Wilson Produce Co. et al. Pennsylvania R. R. Co. et al. 16 I. C. C. Rep. 116. (April 13, 1909.)

Rehearing on complaint of unreasonable track storage or demurrage charges in defendant's Pittsburgh yards and of discrimination against complainant and in favor of other localities by neglect to enforce similar charges at the preferred points.

It appeared that the circumstances in the Pittsburgh yards differed from those at any other points, in that the Pittsburgh produce dealers used the defendant's yards and the cars stored therein as a market in which to buy and sell produce. The defendant had built up the business as transacted in its yards by the allowance of special

facilities there, etc., but found that it had increased to such an extent that it was necessary to impose track charges to prevent too great congestion. The charges were, therefore, fixed at \$1 per day for the first two days after the 48 hours free time, \$3 for the next two days and \$4 for every day thereafter, Sundays and legal holidays excepted. At no other points were similar track charges imposed, but at no other points was the business conducted in the same way as at Pittsburgh.

Held, (Lane, C.), (a) that it was not the defendant's duty as a common carrier to act as a market place or as a warehouseman;

(b) that the defendant was entitled to have its equipment and tracks free within a reasonable time and might impose terms leading to such relief as speedily as possible;

(c) that it was a matter within the control of shippers whether the track charges should be imposed or not;

(d) that in view of the different circumstances and conditions at the other points, there was no undue discrimination against Pittsburgh.

Complaint dismissed.

683-C.—Interstate Commerce Commission v. Delaware, L. & W. R. Co. 216 U. S. 531. Appeal from C. C. S. D. N. Y. (March 7, 1910.)

Appeal from 683-B.

The Rahway Valley Railroad was ten miles long, running southeasterly from Summit, through Kenilworth, to Roselle, its terminus on the Lehigh Valley Railroad, and also southwesterly from Kenilworth to Aldene, its terminus on the Central Railroad of New Jersey, all of above points being in New Jersey. Between Danville, N. J., and Hoboken, N. J., the Delaware, Lackawanna & Western had two branches, the northerly, which was devoted especially to freight, and the southerly, which was devoted as exclusively as possible to passenger traffic. The latter branch passed through Summit, and the petition of the Rahway Valley Railroad Company, on which the order in question was based, required the Delaware, Lackawanna & Western to make a switch connection with its road at Summit. The Delaware, Lackawanna & Western resisted the petition on the ground that it interfered with its policy of having its southerly line restricted to passenger traffic.

Held, (Holmes, J.), (a) that the question as to whether the Rahway Road was a "lateral branch line of railroad" relatively to the appellee was a doubtful one and not to be decided in the present case, although there was force in the contention that the words of the Statute mean a railroad naturally tributary to the line of the carrier ordered to make the connection, and dependent on it for an outlet to the markets of the country, which, according to the bill, the Rahway road was not;

(b) that the object of the Act was not to give a roving commission to every road that might see fit to make a descent upon a main line, but primarily, at least, to provide for shippers seeking an outlet either by a private road or a branch;

(c) that the Statute created a new right not existing outside of it;

(d) that the remedy given by the section creating the right was given only on complaint by the shipper, and such remedy was exclusive.

Decree affirmed.

691-B.—Southern Pac. Terminal Co. et al. v. Interstate Commerce Commission et al. 166 Fed. 134. C. C. S. D. Tex. (Dec. 18, 1908.)

Motion for certificate to the Supreme Court.

The court had refused a motion for an injunction *pendente lite* by a decree made by a majority of the judges, one judge dissenting, whereupon complainants moved the court to certify the case to the Supreme Court.

Held, (Pardee, C. J.), (a) that the original Expediting Act applied only to final hearings;

(b) that under the Sixteenth Section of the Act as amended in 1906, the Expediting Act applied to hearings on application for a preliminary injunction;

(c) that the Expediting Act did not require three circuit judges to sit in any phase of cases to which it was applicable other than those above specified;

(d) that appeals from interlocutory orders granting or continuing injunctions were provided for in Section 16, but no appeal from an order refusing a preliminary injunction was therein provided;

(e) that the provision requiring a certificate from the circuit judges in case they were divided in opinion was required only where they were unable to agree on a final decree, and was not applicable where an order refusing an injunction was entered by direction of a majority of the judges.

Motion overruled.

697-B.—Chicago, R. I. & P. R. Co. et al. v. Interstate Commerce Commission et al.

849-B.—Chicago, B. & Q. R. Co. et al. v. Interstate Commerce Commission. 171 Fed. 680. C. C. N. D. Ill. E. D. (Aug. 24, 1909.)

On motion in the one case for permanent injunction and in the other for preliminary injunction to restrain the Commission from putting into force in the one case an order entered in *Burnham v.*

Chicago, R. I. & P. R. Co., (697), requiring through rates from the Atlantic Seaboard to the Missouri River, to be reduced below the combination of the local rates on Mississippi River points, and in the second case to restrain the putting in force of an order entered March 2, 1909, in the case of *Kindel v. Chicago, B. & Q. R. Co.* (849-A) requiring the reduction of the rate from Chicago and St. Louis to Denver below the sum of the local rates on Mississippi and Missouri River points.

The rate from the Atlantic Seaboard to the Missouri River on first class matter was \$1.47 per 100 lbs., which was equal to the combination of the rates to Mississippi River points (87c.) plus the rate from Mississippi River to the Missouri River, 60c. The order of the Commission required the reduction of this rate to \$1.38. The joint first class rate from Chicago to Denver was \$2.05 and from St. Louis to Denver \$1.80, these being equal to the sum of the rates to and from the Missouri River points. The Commission's order required the reduction of the rates to \$1.80 and \$1.62. There was no evidence that the cost of service was greater on reshipments than on through shipments, nor was it suggested that the proposed change was necessitated by competitive conditions. It appeared that the system of making through rates less than the combination had been followed until the Mississippi River had been reached, but that this system had not been extended across the river. When the railroads went on to the Missouri River, the same system was followed as regards points between the rivers, but was not applied to rates through Missouri River crossings.

Held, (Grosscup, C. J.), (a) that the court was not prepared to say that the tapering system of rates as a general principle was wrong;

(b) that in the present case, however, the Commission was asserting and attempting to exercise power, by the use of differentials, artificially to divide up the country into trade zones tributary to given trade and manufacturing centres;

(c) that to recognize such power in the Commission would be to allow this body to predetermine what trade and manufacturing centres should exist;

(d) that the Commission had no power artificially to apportion out the country into zones tributary to certain trade centres to be predetermined by it;

(e) that as no unreasonable rate or discrimination was apparently involved in this case, the Commission had no power to make the order in question;

(f) that the court had power to review an order made by the Commission in excess of powers delegated to it by Congress.

Permanent injunction granted in the first case, and temporary injunction in the second.

Baker, C. J., dissented, on the ground that the Commission's order

had simply extended to Mississippi and Missouri River crossings the principle of tapering rates which the carriers of their own initiative had applied to all other points, and which they arbitrarily refused to apply to rates through these points; and that the fact that the Commission had large powers which might be used arbitrarily did not prove that such powers had not been delegated to the Commission by Congress.

702-B.—New York Central & H. R. R. Co. et al. v. Interstate Commerce Commission. 168 Fed. 131. C. C. S. D. N. Y. (Feb. 8, 1909.)

Application for preliminary injunction to restrain *pendente lite* the Commission from enforcing its order issued in 701.

In the original petition before the Commission the complaint was made regarding rates enjoyed by millers at Chicago and west thereof as compared with those allowed to complainants, and no complaint was made of preference of millers east of Chicago who enjoyed milling-in-transit privileges which were not accorded complainants. The order of the Commission in effect required the defendants to put complainants on an equality with the millers east of Chicago who had milling-in-transit privileges. The original petition did not cover grain product rates and the relief in effect gave to complainants the benefit of the lower flour rate on all its grain products. The order of the Commission was based on the facts as they developed at the hearing, it appearing that both of the points on which the order in question was made were there brought out.

Held, (Noyes, C. J.), (a) that the order in question was not invalid because it failed to specify the time during which it should remain in force, and that in the absence of such specification, it would remain in force for the maximum time of two years;

(b) that there was no distinction in respect to the application of the two-year limitation between affirmative and negative orders;

(c) that the order was not invalid on the ground that it did not prescribe the maximum rate to be charged for the service to complainants since the Commission had power, under the 12th and 15th Sections of the Act, to require carriers to desist from discrimination, without prescribing the detailed method for carrying out the order;

(d) that the order was not invalid because made on condition that the carriers establish necessary regulations to make certain that the grain on which the export flour rate was applied was actually exported as flour or other grain products, since this provision was not strictly a requirement on the carriers in carrying out the provisions of the Interstate Commerce Act, but was a privilege accorded them, making the order of the Commission less stringent than it otherwise would have been;

(e) that the order was not invalid because it was not confined to the issues raised by the pleadings, since the strict rules of plead-

ing should not be applied to proceedings before the Interstate Commerce Commission, and the court would not declare an order of the Commission invalid unless outside the issues actually presented to the Commission, and upon which the parties were heard;

(f) that without deciding whether or not the court had power to pass upon the reasonableness of an order of the Commission, in the present case the order did not appear so unreasonable and impracticable as to make it advisable to suspend its enforcement pending suit.

Injunction denied.

Ward, C. J., dissented on the ground that the relief granted really amounted to allowing to the complainants a milling-in-transit privilege after the transit had entirely finished, and that under the circumstances, the complainants were asking for a different privilege than that accorded to the millers east of Chicago, alleged to be preferred by the existing conditions. "I think discriminations cannot be created by the shipper's change of mind as to the disposition he will make of his goods after the delivery by the railroad is completed."

703-B.—Star Grain & Lumber Co. et al. v. Atchison, T. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 338. (Dec. 7, 1909.)

The proceeding here came up again on the question reserved in the previous case as to the validity of allowances to tap lines.

It appeared that a number of these lines were regularly incorporated common carriers, but that 90% of the traffic moving over them was lumber received from the mills by which they were owned and controlled. Some few did other business. Out of 740 tap lines investigated by the Commission, 183 were incorporated as railroads, but 65 filed tariffs with the Commission, 50 concurred in tariffs, and 621 neither filed tariffs nor concurred therein; 92 filed annual reports, 498 received their entire traffic from their owners, 33 received more than 20% from the general public, 200 received more than 80% from their owners.

Held, (Harlan, C.), (a) that the Commission could not recognize a tap line as a common carrier under the act and as entitled either to allowances or divisions of through rates where such carrier did not in all respects comply with the law, and allowances to such tap lines, whether incorporated or not, which did not comply with the law, were unlawful;

(b) that "any allowance or division made to or with a tap line that is owned or controlled, directly or indirectly, by the lumber mill or by its officers or proprietors and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates;"

(c) that no order should be issued, but the case held open to

give the carriers an opportunity to adjust the illegal practice herein condemned.

Prouty, C., dissented, holding that it appeared from the facts that the complaint was not instituted by the lumbermen but by the carriers themselves with a view to possible abolition of tap line allowances; that the Commission had recently approved the rates to the region in question in view of the fact that allowances were made from these rates to shippers; that where a tap line was incorporated as a common carrier, possessed the right of eminent domain and was in all respects *bona fide*, it was immaterial that the majority of all its traffic was received from its owner, since it was serving a public necessity and its business would in time develop into a more general public service; that Congress had signified the public necessity for these tap line railroads by the exception in the Commodities Clause; that the decision of the majority was irreconcilable with the Commission's decision in *re* Division of Joint Rates to Terminal Railroads (359), and *United States v. Delaware & Hudson Co.* (713-B), that each case of the division of a tap line where challenged as illegal, should be investigated, and a determination arrived at as to whether the corporation was *bona fide* or was a mere device to evade the act, in which latter case it should be condemned and corrected.

704-B.—Corn Belt Meat Producers' Ass'n. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 533. (Feb. 8, 1910.)

Supplemental complaint requiring compliance by defendants with the order of the Commission as regards feeding-in-transit privileges for cattle and hogs, complaining of unreasonable regulations as to the use of single and double deck cars, and praying for certain territorial regroupings and reductions in cattle and hog rates.

Since the filing of the complaint certain changes by the defendants in the feeding-in-transit tariffs removed this cause of complaint. In the original complaint the Commission had been asked to establish rates on sheep in double deck cars. It now appeared that the Illinois Central, not considering that it had facilities in Iowa for loading sheep in double deck cars, refused to establish rates in such cars. It appeared that in compliance with the previous order of the Commission certain rates on hogs had been advanced in order to effect the general regrouping suggested by the Commission.

Held, (Prouty, C.), (a) that the Illinois Central should establish a tariff rate on sheep in double deck cars, minimum 22,000 lbs., with a rule to the effect that where double deck cars were asked on reasonable notice and not furnished, two single deck cars should be treated in computing the rate and minimum as one double deck car;

(b) that the advances in the hog rates were unreasonable and the rate and grouping on hogs should be reduced as indicated in the opinion, no order to be made for sixty days.

705-B.—Wholesale Fruit & Produce Ass'n. et al. v. Atchison, T. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 596. (Feb. 17, 1910.)

Petition asking the Commission to extend its order in 705 so as to compel carriers in Chicago to furnish assistance in unloading all kinds of produce in packages and to require the unloading of car-load shipments of fruit and vegetables at St. Paul and Minneapolis.

It appeared that the conditions at Chicago, and at St. Paul and Minneapolis, with regard to unloading fruit and vegetables and other package freight, were different. At Chicago assistance had been furnished for many years, the extent varying with the character of the commodity and differing among different carriers and in different yards. There had been no uniform rule on the subject. Competition had an effect, and also much depended on the disposition of the official having the matter in charge. It appeared that at Minneapolis considerable assistance had been furnished and that under the system of determining freight charges the railroad company, without expense to itself, assisted in unloading. At St. Paul assistance had been furnished to a much less extent and at other points in Western Classification Territory practically no such assistance had been furnished. Since January, 1908, no assistance had been furnished except at Chicago, where this was done as to fruits and vegetables in compliance with the Commission's order. At Minneapolis and St. Paul the effect of the withdrawal of the assistance had been to increase the cost of unloading to the consignee by \$2 per car, with practically no saving to the carrier. In many instances fruit and vegetables were allowed to remain in the car at Minneapolis until a purchaser was found.

Held, (Prouty, C.), (a) that since the general practice had been against furnishing assistance and since the practice should be uniform, unless there was a difference in conditions, the present rule as to St. Paul and Minneapolis would not be disturbed, and the complaints as to such points should be dismissed;

(b) that the same was true as to the unloading of other package freight at Chicago, there being no circumstance which rendered the continuance of the assistance necessary;

(c) that the conditions as to fruit and vegetables at Chicago differed from those as to other freight to such an extent as to make the allowance of unloading privileges as to fruit and vegetables proper without a similar allowance as to other freight;

(d) that the conditions at Chicago substantially differed from those at St. Paul and Minneapolis;

(e) that there being no competition between St. Paul and Minneapolis on the one hand and Chicago on the other as to fruit and vegetables, or between fruit and vegetables at Chicago and other freight at the same point, no undue preference or discrimination was effected by the requirement of unloading facilities as to fruit and

vegetables at Chicago and the denial of such facilities elsewhere, or as to other freight at Chicago.

Complaint dismissed.

707-B.—Delaware, L. & W. R. Co. v. Interstate Commerce Commission et al. 166 Fed. 499. C. C. S. D. N. Y. (Nov. 27, 1908.)

Proceeding in equity to suspend the order of the Commission of June 22, 1908.

Held, (Per Curiam) that a majority of the court being in accord with the reason and conclusions expressed in the dissenting opinion of the Chairman of the Commission, an injunction would be granted, and as both sides were agreed that the facts had been fully presented, the application would be turned in to a submission on final hearing and disposed of accordingly.

707-C.—Delaware, L. & W. R. Co. v. Interstate Commerce Commission. 169 Fed. 894. C. C. S. D. N. Y. (Feb. 18, 1909.)

Petition for leave to intervene as parties defendant in foregoing.

The American Forwarding Co., the Transcontinental Freight Co. and the Rockford Manufacturers' and Shippers' Association applied for leave to intervene as parties defendant.

Per Curiam. That the application would be granted, since it appeared that the interveners were the parties who actually tried and argued the case before the Commission, and since the Commission itself asked that the application be granted, but the application should not be allowed to delay the progress of the cause and the interveners must accept all action and unite in all stipulations had or made by the defendant, the Interstate Commerce Commission.

Order accordingly.

710-B.—Florida Fruit & Vegetable Shippers' Protective Ass'n. v. Atlantic Coast Line R. Co. et al. 17 I. C. C. Rep. 552. (Feb. 8, 1910.)

Complaint of unreasonable rate on citrus fruits, vegetables and pineapples from points in Florida to destinations north of the Potomac and Ohio Rivers and east of the Missouri, of preference of pineapple shippers from Cuba by the rate adjustment, of unreasonable rule not permitting mixture of fruits and vegetables in carloads and of unreasonable refrigeration charges.

The original complaint did not allege the specific territory as to which the rates were complained of, merely stating that the complainant shipped fruits and vegetables to all parts of the United States and Canada, and that the rates were unreasonable and should be readjusted. In the original proceeding the carriers operating north of the Ohio were not parties and therefore no conclusion was

reached as to such rates. As regards the vegetable rates to the Ohio River, it appeared that rates had to a certain extent been advanced. In some cases, however, the minimum was reduced, and the rate was still lower than that suggested by the Commission to New York. As regards pineapple rates from Florida, it appeared that the depreciation in the industry was mainly due to overproduction and in any aspect of the case, the Florida pineapples would probably not be able to compete with those from Cuba. Complainants contended that the defendants should make such a rate as would permit them to market their product at a reasonable profit. It appeared that the cost of delivering Cuban pineapples at Chicago, including the cost of transportation from the farm to the dock in Cuba, was approximately 73½c. a 100 lbs. while the Florida rate was 78c. The Florida roads did not appear to have made unreasonably large earnings.

Held. (Prouty, C.), (a) that although the complainants might perhaps put in issue an entire schedule of rates, or rates on a single commodity from a given point to all parts of the United States, yet in some way rates to be dealt with by the Commission must be definitely specified in the complaint, and the defendants properly notified of the thing complained of, and the Commission would not, in the present case, investigate any rates to points other than those specifically mentioned in the complaint;

(b) that rates to points north of the Ohio should be reduced to figures indicated;

(c) that rates to Baltimore, Philadelphia, New York and Boston were unreasonable and should not exceed the figures indicated;

(d) that vegetable rates to points north of the Ohio would not be interfered with;

(e) that the reduction of a minimum justified in a measure an advance in the rate;

(f) that complainants had no right to expect a rate which would permit them to market their product at a reasonable profit irrespective of the cost of the service;

(g) that rates on pineapples from Florida points were nevertheless unreasonable and carload rates should be established reducing the rate to the shipper to a certain extent;

(h) that local rates from base points might properly exceed proportional rates established by amounts given;

(i) that a regulation should be put in force permitting the mixing of fruits and vegetables at the carload rates;

(j) that in view of the lack of proper notice to defendants the refrigeration charges would not be interfered with.

Order accordingly.

712-B.—Atlantic Coast Line R. Co. et al. v. Macon Grocery Co.
et al. 166 Fed. 206. C. C. A. 5th Cir. (Jan. 5, 1909.)
Appeal from 712.

Defendants were none of them residents of the Southern District of Georgia, but were all citizens of different states from all of the complainants.

Held, (McCormick, C. J.), (in an opinion reviewing the provisions of the Act) (a) that this case presented for necessary consideration the proper construction of the Act to Regulate Commerce, and the jurisdiction of the court did not, therefore, rest solely upon the diversity of the citizenship of the parties, so that the suit was properly brought in the district of complainants' residence;

(b) that a sound construction of the different provisions of the Act to Regulate Commerce as construed in the Abilene Cotton Oil Case (453) necessarily forbade the exercise of the jurisdiction attempted to be invoked by the bill in this case;

(c) that the expression of the Supreme Court in *Southern Ry. Co. v. Tift* (319-C) to the effect that the Abilene case did not control a decision of the present question, was *dicta* and not conclusive.

Decree reversed and cause remanded with instructions to dismiss the bill.

712-C.—Macon Grocery Co. v. Atlantic Coast Line R. Co. 215
U. S. 501. (Jan. 17, 1910.)

Appeal from 712-B.

The object of the bill was to restrain the putting into effect by the carriers of proposed advanced rates which had been filed with the Commission, but which had not yet become effective. The defendants were none of them inhabitants of the district in which they were sued. The various defendants specially appeared for the purpose, and filed pleas to the jurisdiction and also, without waiving the benefit of such pleas, jointly demurred to the bill.

Held, (White, J.), (a) that without passing on the question as to the power of the courts to entertain a bill for an injunction to restrain the putting into effect of proposed rates, since the case here presented was one arising under a law or laws of the United States, the jurisdiction of the Circuit Court not being invoked solely on the ground of diversity of citizenship, and there being no waiver of the exemption of being sued in the district where defendant was an inhabitant, the court below was without jurisdiction of the persons of the defendants;

(b) that as the pleas to the jurisdiction of the Circuit Court had been seasonably made, they should have been sustained and the bill dismissed without prejudice for want of jurisdiction over the persons of the defendants;

(c) that as the same result will be reached by the decree entered in the Circuit Court of Appeals ordering the reversal of the decree of the Circuit Court and remanding the case with instructions to dismiss the bill without prejudice, the decree of the Circuit Court of

Appeals would be framed without expression of opinion as to the merits of the reasoning on which it was based.

Mr. Justice Harlan dissented on the ground that the case should have been disposed of on the authority of *Baltimore & Ohio R. Co. v. Piteairn Coal Co.*, (495-C), holding that shippers complaining of rates adopted by interstate carriers could not obtain relief by an original suit brought in any court, federal or state, but must make application at the outset to the Interstate Commerce Commission; and that as the controversy was between citizens of different states, the power of the federal court based on diverse citizenship was not affected by the fact that incidentally a federal question was involved.

713-B.—*United States v. Delaware & Hudson Company et al.* 213 U. S. 366. (May 3, 1909.)

Appeal from 713.

Held, (White, J.), (a) that where a statute is reasonably susceptible of two constructions, one of which would raise grave and doubtful constitutional questions, it was the duty of the court to adopt the other construction, and avoid the decision of the constitutional questions, if the latter construction be reasonable;

(b) that the hardship and the injurious consequences alleged to result from the enforcement of the statute as construed by the Government was not the criterion of its constitutionality;

(c) that the exception of lumber did not render the act unconstitutional;

(d) that the provision for penalties was separable from the regulating provisions, and the constitutionality of the penalty provision would not be considered except in a suit involving the imposition of fines;

(e) that the Delaware & Hudson Co. was a common carrier, within the provisions of the Act;

(f) that the Act did not prohibit a railroad company from transporting commodities merely because they had been manufactured, mined or produced by it or owned by it or in which it held an interest, wholly irrespective of the relation or connection of the carrier with the commodity at the time of transportation;

(g) that if, at the time of the transportation, the railroad company had, in good faith, before the act of transportation, parted with its interest in such a commodity, the act did not apply;

(h) that the ownership of stock by a railway company in a producing company did not cause it, as the owner of such stock, to have an "interest direct or indirect" in the commodity manufactured, etc., by the producing corporation, so as to prohibit the railroad company from transporting the commodity, within the meaning of the Act;

(i) that as the construction now given to the Act differed so

widely from that which the government had insisted upon and which it was the purpose of these suits to enforce, the case would be remanded to the Circuit Court with instructions to enforce and apply the statute as now construed.

Order accordingly.

II. DECISIONS IN NEW CASES.

728.—**Vanderslice-Lynds Mercantile Co. et al. v. Missouri Pacific R. Co.** (Unreported.) C. C. D. Kas. 1st Div. (Jan. 7, 1902.)

Plea to jurisdiction in demurrer to bill to relieve against alleged discriminatory interstate rates.

The complainants were citizens of Missouri and the defendant a corporation formed by the consolidation of Missouri, Kansas and Nebraska corporations. The acts complained of were committed in Missouri.

Held, (Hook, J.), (a) that the cause and ground of relief, as stated in the bill, arose under the laws of the United States;

(b) that a bill in equity did not lie in the first instance to relieve against discriminatory rates where the Interstate Commerce Commission had not yet acted.

Bill dismissed without prejudice to actions at law or proceedings before the Interstate Commerce Commission.

729.—**United States v. Stearns Salt & Lumber Co.** 165 Fed. 735. D. C. W. D. Mich. S. D. (Nov. 16, 1908.)

On motion for new trial after conviction for receiving rebates.

The indictment contained 20 counts, each charging the unlawful receipt of a rebate on a shipment of a carload of lumber from Ludington, Mich., to Toledo, Ohio. The ground on which the new trial was asked was that, while the shipments were 20 in number, there were in fact but 6 payments, this fact being admitted by the government.

Held, (Knappen, D. J.), that without deciding what the rule would be in case the indictment had charged the acceptance of a discrimination at the time of shipment, under the indictment as framed the defendant was properly subject to conviction of but six violations.

Decree accordingly.

730.—**United States v. Bunch.** 165 Fed. 736. D. C. E. D. Ark. (Dec. 14, 1908.)

On plea of guilty to indictment for receiving rebates.

The indictment contained 58 counts, as to 48 of which the government entered a *nol. pros.* Each count charged the acceptance and receipt of a rebate on a shipment in a given described car, the published rate having been paid by defendant and a sum of money having been repaid to him on each car. Defendant entered a plea of guilty

to 10 of the counts, and specially pleaded to 9 of the 10 that as to 4 of the 9 the rebate was made in one settlement, based upon one application and paid in one check, and that the same was true as to the remaining 5. The government admitted the truth of this allegation, so that upon the admitted facts there had been but 3 payments, without any special plea to the first count. The only question involved was therefore the number of offenses committed.

Held, (Trieber, D. J.), (a) that as the indictment charged the "receipt" of a rebate and there were only 2 payments to the defendants on these 9 counts, and he received only 2 rebate checks, there were only 2 offenses committed under the indictment as framed charging the receiving of rebates;

(b) that "this act, in so far as it applies to the shippers, creates three distinct offenses: First, the soliciting of a rebate, concession, or discrimination in respect of the transportation of property in interstate or foreign commerce; second, the acceptance of any such rebate, concession, or discrimination; third, the receipt of such rebate, concession, or discrimination;"

(c) (semble) that in case of the first two offenses, actual receipt of the rebate was not necessary to constitute the offense, the solicitation in the one case and the acceptance of the offer of the carrier in the second case being the gist of the offense;

(d) that in case of the third of the above offenses, it was immaterial whether or not the rebate was paid in pursuance of a former agreement or without such understanding, the offense being completed, when the shipper received a rebate or concession from the published rate;

(e) that the defendant could be held guilty of only three offenses; one under his plea to the first count, one on the next four counts, and one on the last five.

731.—*Porter et al. v. St. Louis & S. F. R. Co. et al.* 15 I. C. C. Rep. 1. (Jan. 5, 1909.)

Complaint of unreasonable rate on emigrants' outfits from Fletcher, Oklahoma, to Bovina, Tex., as exceeding combination of local rates and demand for reparation.

The rate charged was 68c. per 100 lbs. The combination of locals then applicable over the route by which shipment moved was 62c. per 100 lbs. At the time of the complaint, such combination of locals was 41c. per 100 lbs. The tariff in question was complicated and intricate.

Held, (Cockrell, C.), (a) that a rate or tariff published and filed with the Commission cannot be held to be legal merely because of that fact; it must also be plain and intelligible;

(b) that the rate charged was unreasonable in so far as it exceeded 41c. per 100 lbs.

Order and reparation accordingly.

732.—Rantz Bros., Inc. v. Chicago, B. & Q. R. Co. et al. 15 I. C. C. Rep. 7. (Jan. 5, 1909.)

Complaint of refusal to establish reasonable rates and furnish facilities for transportation of bullion or jewelers' sweepings from Minnesota to Rhode Island points.

After the hearing the defendant satisfied the cause of complaint.

Held, (Cockrell, C.), (on motion of complainant) that the complaint should be dismissed.

733.—Naylor & Co. v. Lehigh Valley R. Co. et al. 15 I. C. C. Rep. 9. (Jan. 5, 1909.)

Complaint of unreasonable rate on pyrite cinder from Buffalo, N. Y., to points in Pennsylvania and New Jersey, and demand for reparation.

Pyrite cinder is a product of iron pyrites obtained by eliminating the sulphur by burning. The rate on iron ore was \$1.45, while that on pyrite cinder was \$2.00 per ton. Defendants contended that pyrite cinder should have a higher rate owing to longer time required in loading, and because iron ore was consumed in larger quantities than pyrite cinder.

Held, (Lane, C.), (a) that the rate on the two commodities should be the same;

(b) (semble) that the fact that iron ore was consumed in greater quantities than pyrite cinder did not entitle it to a lower rate;

(c) that reparation would not be awarded.

Order accordingly.

734.—Commercial Coal Co. v. Baltimore & O. R. Co. et al. 15 I. C. C. Rep. 11. (Jan. 5, 1909.)

Complaint of unreasonable rate on bituminous coal from Grafton, W. Va., via Willow Creek, Indiana, to Kalamazoo, Mich., and demand for reparation.

At the time of the shipment in question, the rate was \$1.90 per ton for a distance of 640 miles. Subsequently, for competitive reasons, it was reduced to \$1.85 per ton and this formed the basis of the demand for reparation.

Held, (Clark, C.), (a) that the voluntary reduction of a rate does not carry with it a conclusive presumption that the prior rate was unjust or unreasonable;

(b) that a carrier with a long route is not obliged, as a matter of law, to meet the rate of a short line competitor.

Complaint dismissed.

735.—American Bankers' Ass'n. v. American Express Co. et al. 15 I. C. C. Rep. 15. (Jan. 5, 1909.)

Motion to dismiss complaint of discrimination in the sale and purchase of exchange to the prejudice and disadvantage of complain-

ants, and prayer for an order commanding defendants to cease and desist from such violations of the Act, and for a *duces tecum* for the sake of securing certain information with reference to the conduct of defendants' banking business.

Held, (Clark, C.), distinguishing *New York, New Haven & Hartford R. Co. v. I. C. C.* (339-B) and *Re Grain Rates of Chicago*, G. W. R. Co. (214), (a) that as the Commodities Clause had been declared unconstitutional by the Circuit Court, the Commission would not undertake to apply it to this case or to enforce it;

(b) that the only violation of the Act which seemed possible under the complaint would consist in the transportation by defendants of their own money for settlement of balances at less cost than the price charged complainants for the same service;

(c) that as the information sought by the subpoena did not seem necessary or pertinent to the showing of undue discrimination, the prayer would be denied;

(d) that the case would be retained for hearing further testimony along the lines indicated.

736.—Central Commercial Co. v. Mobile, J. & K. C. R. Co. et al.
15 I. C. C. Rep. 25. (Jan. 5, 1909.)

Complaint of unreasonable rate and of overcharge on rosin from Louin, Miss., to Peoria, Ill., and demand for reparation.

The rate exacted was a combination rate of 61c. on Ackerman, Miss. At the same time there was a through rate of 27c. in effect from Laurel, Miss., a point three miles distant from Louin, and defendants admitted that the rate from Louin should not exceed that from Laurel.

Held, (Clark, C.), that reparation should be awarded on the basis of the 27c. rate.

737.—Whitcomb v. Chicago & N. W. R. Co. et al. 15 I. C. C. Rep. 27. (Jan. 5, 1909.)

Complaint of unreasonable rate on uncrated automobile from Beatrice, Neb., to Kenosha, Wis., and demand for reparation.

Complainant had asked defendants' agent for the rate between the points in question and had been informed that it was double first class or \$1.84 per 100 lbs. Her automobile weighed 725 lbs., and was an old one. The tariff in fact provided for a 5000 lb. minimum at the first class rate of 92c. and this rate was exacted, amounting to \$46.

Held, (Lane C.), (a) that under the law as it stands there is no remedy before the Commission based on the mistake of the carrier's agent in quoting rates, as the tariff rates must be applied regardless of what agents may state;

(b) that in view of the risk of carriage involved the rate exacted was not unreasonable;

(c) that defendants were not bound to classify automobiles on the basis of value or of whether they were new or second hand.
Complaint dismissed.

738.—Paola Refining Co. v. Missouri, K. & T. Ry. Co. 15 I. C. C. Rep. 29. (Jan. 7, 1909.)

Complaint of unreasonable rate on oil from Paola, Kansas, to Boonville and Holden, Mo., and of preference of Kansas City, Mo., by lower rates through Paola.

The rates in question were 17c. and 15c. for 138 miles and 54 miles. The rates from Kansas City to the same points through Paola were 9.85c., and 7c. for 182 miles and 97 miles. The Kansas City rates had formerly been 17c. and 15c. but were reduced to the present figures by reason of a reduction by an intra-state road in compliance with an order by the Missouri Commission. There was no evidence as to the reasonableness *per se* of the rates.

Held, (Knapp, Ch.), (a) that although rates prescribed by State Commissions were presumed to be reasonable, the same presumption attached to rates voluntarily established by the carriers;

(b) that "the Commission is justified in reducing a rate only when upon consideration of all facts and circumstances it is convinced that the rate in question is unreasonable or unduly discriminatory;"

(c) that the rates in question did not appear to be unreasonable.

Complaint dismissed without prejudice.

739.—Folmer & Co. v. Great Northern Ry. Co. et al. 15 I. C. C. Rep. 33. (Jan. 6, 1909.)

Complaint of overcharge on account of misrouting and of failure to apply certain customary reconsignment rates.

It had been customary for defendant to hold at Menasha, Wis., shipments of shingles from Pacific Coast points subject to rebilling to points beyond Chicago at proportional rates. This privilege was not in the tariffs prior to August 28, 1906. In March, 1906, owing to the failure by defendant's agent to place the proper notation on the way-bill, a shipment proceeded at the sum of the local rates, giving rise to a charge \$28.50 higher than would have been exacted had the reconsignment rate been applied. This complaint was filed June 11, 1908, but the claim was presented to the Commission informally in February, 1908.

Held, (Knapp, Ch.), (a) that the informal complaint was sufficient to stop the running of the Statute of Limitations;

(b) that as the mistake of the agent resulted simply in the exaction of the tariff rate, there was no ground for complaint.

Complaint dismissed.

740.—Laning-Harris Coal & Grain Co. v. St. Louis & S. F. R. Co.
15 I. C. C. Rep. 37. (Jan. 7, 1909.)

Complaint of exaction of unlawful switching charge on hay at Kansas City, Mo., and demand for reparation.

Defendant admitted a charge of \$42 in excess of its tariff rates but claimed the right to set-off claims for undercharges in previous shipments.

Held, (Knapp, Ch.), (a) that in a proceeding under the Act, the Commission had no power to adjudicate a claim by the carrier against the shipper or to allow the carrier to set-off such a claim, and this conclusion was not affected by the fact that, in order to enforce the Commission's order, the complainant would have to go before a court having power to allow the set-off;

(b) that the Commission had authority to compel the restoration by a carrier of charges exacted in excess of tariff rates.

Order that defendant pay complainant \$42 with interest.

741.—Lindsay Bros. v. Michigan Central R. Co. et al. 15 I. C. C. Rep. 40. (Jan. 5, 1909.)

Complaint of unreasonable joint through rates on L. C. L. shipments of boilers from Kalamazoo, Mich., to points in Wisconsin over defendants' lines, as exceeding the combination of locals, and demand for reparation.

The joint through rate in question properly published was 65c. per 100 lbs., whereas the combination rate was 52c. to certain of the points and 51½c. to others. Defendants, without conceding the unreasonableness of the joint through rate, offered to reduce it to the combination of the locals and to pay reparation if the Commission found the joint through rate to be unreasonable.

Held, (Clark, C.), that as there was no testimony overturning the *prima facie* presumption of the unreasonableness of the joint through rate exceeding the sum of the locals, an order would be made awarding reparation on the basis of the latter.

Order accordingly.

742.—State of Oklahoma v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 42. (Jan. 8, 1909.)

Complaint of unreasonable rates on petroleum from Kansas and Missouri points to points in Oklahoma.

On comparison with other oil rates under similar conditions,

Held, (Lane, C.), that the rates should be reduced to figures specified.

Order accordingly.

743.—Re Passes to Clergymen and Persons Engaged in Charitable Work. 15 I. C. C. Rep. 45. (Jan. 9, 1909.)

Held, (By the Commission), (a) that a clergyman does not lose his

ministerial standing by reason of the fact that he leaves his pastorate for some other field of religious activity;

(b) that the words "charitable" and "eleemosynary" should be given a liberal construction;

(c) that "a charitable institution is one which is administered in the public interest, and in which the element of private gain is wanting;"

(d) "such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain."

744.—Red Wing Linseed Co. v. Chicago, M. & St. P. Ry. Co. 15 I. C. C. Rep. 47. (Jan. 5, 1909.)

Complaint of unreasonable rate on flaxseed from Britton, S. Dak., to Red Wing, Minn., and demand for reparation.

The rate exacted was 26½c. Defendant admitted that any rate in excess of 15½c. was unreasonable.

Held, (Clark, C.), that reparation should be awarded accordingly.

745.—Menefee Lumber Co. v. Texas & Pac. R. Co. et al. 15 I. C. C. Rep. 49. (Jan. 7, 1909.)

Complaint of unreasonable rate on yellow pine lumber from Lake Charles, La., to El Paso, Tex., and demand for reparation.

The tariff rate charged was 32.5c. per 100 lbs., the shipment proceeding over the lines of the Texas & Pacific Railroad and St. Louis, Watkins & Gulf Railroad, a distance of 1067 miles. The complaint was based on the fact that on shipments between the same points over the shorter line of the Southern Pacific Railroad alone (972 miles) the rate was but 25c., while when the lines of two carriers were used, a higher rate had been provided. A short time before the filing of the complaint, the rate in question had been reduced to 25c. but the 32.5c. rate had been in force for nearly three years and a great deal of traffic had been handled under it.

Held, (Clark, C.), that the voluntary reduction of a rate by a carrier did not necessarily entitle shippers under the old rate to reparation.

Complaint dismissed.

746.—Blume & Co. v. Wells Fargo & Co. 15 I. C. C. Rep. 53. (Jan. 7, 1909.)

Motion to dismiss demand for reparation for delay in making delivery of fruit, resulting in loss of profits on a falling market.

Held, (Harlan, C.), (a) that the Commission had no jurisdiction over a matter of this kind;

(b) "It was not intended by the Congress that the Commission should supplant and take the place of the courts with respect to that large class of complaints that may arise out of the failure of carriers to carry out their contracts of transportation promptly, and safely and properly to perform their duties as common carriers in the handling of shipments entrusted to them for carriage from one point to another."

Complaint dismissed.

747.—Foster Lumber Co. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 56. (Jan. 7, 1909.)

Demand for reparation for charge of unreasonable rate on lumber from Fostoria, Tex., to Melrose, New Mexico.

In September, 1906, when the shipment in question was made, the published rate was 40c. per 100 lbs. On January 7, 1907, defendants put in effect a joint through rate of 33c. per 100 lbs. Under the new rate, the total charge on the shipment in question would have been \$43.22 less. This proceeding was brought after the reduction of the rate by the railroad, and no petition had been made to the Commission or demand on the railroad for the reduction of the rate prior to such reduction.

Held, (Lane, C.), (a) that the 41c. rate was not shown to have been so unreasonable when charged as to warrant the refund of the difference between it and the rate as reduced;

(b) that the voluntary reduction of a rate by a carrier was not, of itself, sufficient to form the basis of an award of reparation.

Complaint dismissed.

748.—Green Bay Business Men's Association v. Baltimore & O. R. Co. et al. 15 I. C. C. Rep. 59. (Jan. 9, 1909.)

Complaint of unreasonable rates from Green Bay, Wis., to the Atlantic Coast, and of preference of other points in the vicinity by failure on the part of the defendants to make Green Bay a 100% point.

Freight rates between the Atlantic Seaboard and points west of the Buffalo-Pittsburgh line up to the Mississippi River were generally grouped on a percentage basis, with the Chicago-New York rate as a unit. From 1890 to 1902, Green Bay had been a 100% point, but it was not shown clearly to what lines these rates had been applied. In 1902 it was made a 112% point. It appeared that all the industries now complaining had been established long before Green Bay was made a 100% point. In comparison with rates to points nearby, it appeared that where such points were given 100% rates it was by reason of the fact that they were reached by ferries across Lake Michigan, or were points intermediate between car ferry points. During the season of open navigation, Green Bay had a considerable advantage in rates over a number of these points. A map on page 60 of the report fully explains the situation.

Held, (Prouty, C.), (a) that although the Commission had often held that the long maintenance of a given rate is an admission of its reasonableness, and that where, on the strength of a given rate, capital had been invested and industrial conditions become established, such rate could not be discontinued without taking into account its effect on these commercial and industrial conditions, the Commission had never held that there was any absolute rule requiring, for any reason, the indefinite continuance of such a rate, it being always a question of what, under the circumstances, was just and reasonable;

(b) that the imposition of a high rate had imposed a burden on Green Bay over and above that when the lower rate was in effect, but such condition was not unjust or unreasonable.

Complaint dismissed.

749.—*Godfrey & Son v. Texas, Ark. & La. R. Co. et al.* 15 I. C. C. Rep. 65. (Jan. 9, 1909.)

Complaint of unreasonable rates on canned peaches from Atlanta, Texas, to Chicago, and demand for reparation.

At the time the shipments in question were made, the lawful published rate on canned peaches over the Texas & Pacific Ry. Co. to Chicago, was 61c. and to Kansas City 58c. per 100 lbs., these being commodity rates. The defendants' agents told the plaintiffs that the same rates were in effect over the Texas, Arkansas & Louisiana R. Co., believing this to be the case, and so induced the shipment over their line. The above statement, however, was an error, there being no commodity rates duly published and the complainants were compelled to pay class rates of 82c. per 100 lbs. to Chicago, and 75c. to Kansas City. The complainants asked for an order establishing the rate of 54c. to Chicago and 50c. to Kansas City. At the time of the filing of the complaint, the defendants had put in effect a rate of 58c. to Chicago and 51c. to Kansas City, and were willing to make reparation on that basis. Complainants relied on the fact that rates of 58c. and 51c. were applicable to points in Texas, 400 miles from Atlanta.

Held, (Harlan, C.), (a) that the common point system in Texas was a proper method of rate making;

(b) that although the rates here charged were unreasonable, the amount of reparation would be limited to the excess over the present rates.

Order accordingly.

750.—*Grand Rapids Plaster Co. v. Pere Marquette R. Co. et al.* 15 I. C. C. Rep. 68. (Jan. 5, 1909.)

Demand for reparation for overcharge on two carloads of plaster, from Grand Rapids, Mich., to Houghton, Mich., via Milwaukee, Wis.

It appeared that the rate actually charged was 20c., whereas the parties had believed that the rate would be only 16½c., the extra charge being on account of a defect in the joint tariff in failing to name the defendant as concurring therein. By another route, duly published, the rate was 16½c.

Held, (Cockrell, C.), that the rate charged was unreasonable to the amount of 3½c. per 100 lbs. and reparation should be awarded accordingly.

752.—North Brothers v. Chicago, M. & St. P. Ry. Co. et al. 15 I. C. C. Rep. 70. (Jan. 9, 1909.)

Complaint of unreasonable rates on hay from Kansas City to the Mississippi River and demand for reparation.

For several years prior to June 30, 1907, there had been in effect commodity rates on hay from Kansas City over defendant's lines as follows: To the Mississippi River, 12½c.; to Peoria rate points, 15c.; to Chicago rate points, 17½c. On June 30, 1907, these rates were cancelled and the regular class rates became effective as follows: to the Mississippi River, 17c.; to Peoria rate points, 19½c.; to Chicago rate points, 22c. Three of the lines, however, restored the old rates in July, August and September, 1907, respectively, and another (the Chicago, Rock Island & Pacific R. Co.) reduced the class rate considerably.

Held, (a) that the rates as originally established were reasonable and the increase was unreasonable;

(b) that although a railroad need not under all circumstances meet the rate of its competitor, yet the maintenance of the commodity rates prior to June 30, 1907, was decisive in this case as to the unreasonableness of the increase and of the modified rates subsequently in effect over the Rock Island road.

Order establishing the original rates and awarding reparation accordingly.

753-A.—Cedar Hill Coal & Coke Co. et al. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 73. (Jan. 9, 1909.)

Complaint of unreasonable rate on coal from complainant's mine in the Trinidad District in Colorado to points on the Atchison, Topeka & Santa Fe road in other states, and of discrimination in favor of the Victor Fuel Co. and the Colorado Fuel & Iron Co. mines in the vicinity, by adjustment of joint rates between the defendants and roads controlled by these coal companies.

Complainants' mines were reached by short spurs from the line of the Colorado & Southern, which connected with the Atchison, Topeka & Santa Fe at Trinidad. These spurs connected with the Colorado & Southern at Ludlow, 15 miles north of Trinidad. The rate from complainants' mine to Trinidad for local consumption was 65c., and when destined to points on the Atchison, Topeka & Santa Fe,

40c. per ton. The Colorado & Southeastern Railway was on the line running from Ludlow, a point on the Colorado & Southern 15 miles north of Trinidad, to Barnes. The Colorado & Southeastern Railway was a short line, $6\frac{1}{2}$ miles in length, extending west from Barnes, a point on the Denver and Rio Grande about two miles east of Ludlow, crossing the Colorado & Southern at Ludlow. This line was owned and operated by the Victor Fuel Co. which operated mines along it. Coal from the Victor Fuel Co. mine was transported over the Colorado & Southeastern to Ludlow, and thence over the Colorado & Southern to Trinidad. Under an arrangement between the Colorado & Southeastern and the Colorado & Southern, the former was given trackage rights over iron of the Colorado & Southern from Ludlow to Trinidad for freight intended for points on the Santa Fe. The Colorado & Southeastern published joint rates with the Atchison, Topeka & Santa Fe which were in all cases the same as those of the Santa Fe from Trinidad, the Santa Fe allowing the Colorado & Southeastern 10c. per ton as a division of the through rate. The Colorado & Wyoming Railway extended 37 miles west from Jansen, a point on the Atchison, Topeka & Santa Fe and a short distance southwest of Trinidad. The Colorado & Wyoming was owned by the Colorado Fuel & Iron Co., and the Santa Fe published joint rates with it which were in all cases the same as those of the Santa Fe from Trinidad, the Colorado & Wyoming being allowed 10c. per ton as its division of the joint rate. It was thus apparent that either the Victor Fuel Co. or the Colorado Fuel & Iron Co. could ship coal to points on the Santa Fe at 10c. per ton less than the rate from Trinidad, whereas the complainants were required to pay 40c. more than the Trinidad rate.

Held, (Prouty, C.), (a) that 10c. per ton was not an unreasonable division of the through rate either to the Colorado & Southeastern or to the Colorado & Wyoming;

(b) that the publication of joint rates between the Santa Fe and the Colorado & Southeastern, or the Colorado & Wyoming, was not illegal;

(c) that these railroads should not be allowed so to divide and diversify themselves by contracts and traffic agreements as to work a practical discrimination against the complainants;

(d) that as the Colorado & Southeastern was not a party to this proceeding, no order could be made compelling the cessation of the illegal preference;

(e) that the rate of 40c. per ton from complainant's mines to Trinidad, when the coal was for points upon the Santa Fe, was excessive, and should not exceed 25c. per ton;

(f) that the Santa Fe should, by proper tariff regulation, apply to the coal from complainant's mine, when received from the Colorado & Southern at Trinidad, a rate of 10c. per ton less than the rate from Trinidad;

(g) that although this left the complainants at a disadvantage of 15c. per ton compared to the rate paid by the Victor Fuel Co. and the Colorado Fuel & Iron Co., this advantage on the part of the latter companies was due to their ownership in and construction of the railroads, and as the division of the through rates received by the two roads was less than should be forced on the Colorado & Southern, this disadvantage to the complainants was not unreasonable;

(h) that "so long as there is identity of ownership in the agency of transportation and the thing transported, it is extremely difficult, if not impossible, to prevent discrimination between shippers." Order accordingly.

753-B.—Cedar Hill Coal & Coke Co. et al. v. Atchison, T. & S. F. Ry. Co. et al. 16 I. C. C. Rep. 402. (June 8, 1909.)

On petition for re-hearing by the Colorado & Southern Ry. Co., complainants insisted that under the foregoing ruling of the Commission there still remained a discrimination of 15c. per ton. The Commission had refused to order a cessation of the discrimination on the ground that the Colorado & Southeastern Railroad was not then a party. This road was cited to appear at the rehearing.

Held, (Prouty, C.), (a) that the defendants should desist from according coal originating on the Colorado & Southeastern and transported to points on the Santa Fe, a lower rate than that given to the coal of the complainants from their mines at Ludlow;

(b) that by reason of the ownership of the Colorado & Southeastern by the Victor Fuel Company, it was impossible to deal effectively with the situation and the only remedy was to see to it that the rate charged complainants was reasonable;

(c) that if it appeared that the Santa Fe was allowing to the Colorado & Southeastern a larger division of the through rate on coal coming from the Colorado & Southeastern than that allowed complainant's coal from Ludlow, the Commission might take further steps in the matter.

Order accordingly.

754.—Darling & Co. et al. v. Baltimore & O. R. Co. et al. 15 I. C. C. Rep. 79. (Jan. 9, 1909.)

Complaint of unreasonable rates on phosphate rock from the Mt. Pleasant and Centerville Districts in Tennessee, to manufactories in Illinois, Mich., and eastern states, via Ohio River crossings.

The rates in question had all been advanced in November, 1907, prior to which date the rates were in the main satisfactory. They had been in force for some eight years previous to the advance. The defendants claimed that these rates had originally been established for developing the Tennessee mines and were unreasonably low at that time, but it appeared that the same circumstances as to competition were effective now as when the rates were first fixed; also

that the value of the rock had more than doubled. It was also contended that many manufactories had been established on the faith of the lower rates. Comparisons with other rates were relied upon by the complainants, it appearing that the rates on this rock were somewhat more than the average receipts from traffic of all kinds.

Held, (Prouty, C.), (a) that the voluntary maintenance of a rate for a considerable period was in the nature of an admission that the rate was reasonable, which must be given great weight in determining that question unless explained;

(b) that the increase in value of the rock in question was a circumstance to be considered in determining the reasonableness of the rate;

(c) that the rate per ton mile on this commodity should be lower than that upon most commodities and lower in almost every case than the average receipts of the carriage from all sources;

(d) that although a water port was entitled to whatever advantage it could obtain through water transportation, its location did not necessarily entitle it to lower rates by rail and the rail carriers would not be required to meet the competition with the water lines;

(e) that the rates as increased were unreasonable and should be reduced to figures given, reparation being awarded upon the basis of the rates established.

Order accordingly.

755.—*Palmer & Miller v. Lake Erie & Western R. Co. et al.* 15 I. C. C. Rep. 107. (Jan. 7, 1907.)

Complaint of unreasonable rate on corn from Celina, Ohio, to Johnstown, Pa., and demand for reparation.

The only evidence submitted as showing the unreasonableness of the rate was that a lower rate was in force between the same points via other routes. No evidence was submitted as to the comparative conditions of transportation over the different routes.

Held, (Clements, C.), that the evidence was not sufficient to sustain the petition.

Complaint dismissed.

756.—*Beatrice Creamery Co. et al. v. Illinois Central R. Co. et al.* 15 I. C. C. Rep. 109. (Jan. 6, 1909.)

Complaint of unreasonable rates on cream from railroad stations in dairy districts to centralizer plants at Chicago and neighboring points.

In the district round about Chicago, there were two different methods in force in the manufacture of butter. Under the first of these methods, butter was manufactured at the so-called local creameries, the milk or cream being brought in by the farmers in wagons. These creameries could extend their operations for only about seven miles. Under the other system, the farmers separated their own

cream and shipped the cream thus separated by rail to centralizer plants, for distances as great as 600 miles. Shipments of this kind were made east from the region between Chicago, Detroit and Port Huron and east from Colorado common points. When the centralizer plants were first established, the rates were made very low on the so-called 33 or 38c. scale, the latter being the charge for a ten gallon can for an average haul of 300 miles. Later, these rates were greatly increased, in some cases being 60c. and in some cases, 70c. The dairy rate, however, on milk and cream for local consumption in Chicago was much lower. It was contended that the local creamery method was more advantageous to the public as producing a better product and also was to the advantage of the farmer in getting a higher price for his milk and cream, but the evidence did not bear out these contentions. It appeared, on the other hand, that the introduction of the centralizer produced helpful competition amongst butter manufacturers and was probably for the advantage of the farmer.

Held, (In an opinion giving an extended review of the circumstances surrounding the production and transportation of the commodities in question), (Prouty, C.), (a) that although, where a particular industry had grown up under rates voluntarily established and maintained by the carriers, in considering the reasonableness of an advance in such rate, the Commission would take into account the effect upon such industries, yet there was no such thing as a contract between a railway and a shipper that a given rate should be charged and maintained;

(b) that in considering the question of the reasonableness of the rates charged complainants, the Commission would not establish rates with a view and for the purpose of fostering and discouraging either the form of industry as carried on by the complainants or by the local creameries, but would seek to establish just and fair transportation charges for both;

(c) that the rates established for transportation of milk and cream into New York in *Milk Producers Protective Association v. Delaware, L. & W. R. Co.*, (220) were not applicable to the present case;

(d) that the rates at present charged complainants were unreasonable and should be reduced to a scale specified in the order.

Order accordingly.

757.—Fairmont Creamery Co. v. Pacific Express Co. 15 I. C. C. Rep. 134. (Jan. 9, 1909.)

Complaint of defendant's refusal to issue a receipt or bill of lading for empty milk cans from country stations to Omaha, Neb.

The rates under which the cream was handled included a return of the empty cans. It appeared that originally the defendant had charged 5c. per can for the return of empties, but this was not satisfactory, so that an arrangement was entered into in 1890 by which

the defendant made no charge for the return of the empties, but was released from liability on the return movement. In accordance with this arrangement, no receipts or bills of lading were issued for the empties. The case was heard with Beatrice Creamery Co. v. Illinois Central R. Co. (756).

Held, (Prouty, C.), (a) that in fixing the rate in the principal case, the fact that additional receipts and bills of lading for the return of empties would have to be issued was taken into account;

(b) that the Commission would not now decide whether the failure to issue a bill of lading on empty cans was a violation of Section 20, of the Act;

(c) that in the present case, no order was necessary.

758.—Venus v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 136. (Jan. 7, 1909.)

Demand for reparation for unreasonable charge on shelled oats from Hope, Ark., to Olla, La.

The rate charged was 51c. per 100 lbs., while 31c. was admitted by all parties to have been a reasonable rate, the amount of the overcharge being \$64. The shipment was made on July 7, 1904, and paid for on July 19, 1904. The claim was first presented in writing to the Commission on June 13, 1907, and thereupon defendant was advised by the Commission of its presentation, but a formal petition was not filed until April 4, 1908. The only question involved was whether the cause of action was barred by the Statute of Limitations.

Held, (Clements, C. J.), (a) that as the limitation provision of the Act did not specify the manner of presentation of complaints, it was not deemed essential that claims should be accompanied by a formal petition as prescribed by the Rules of Practice to prevent the operation of the Statute of Limitations;

(b) that the presentation of the claim on June 13, 1907, barred the operation of the Statute, being a sufficient presentation within one year after the passage of the Amended Act.

No order entered, it being understood that defendant stood ready to make reparation of the amount claimed on the Commission's determination that it might legally do so.

759.—Celina Mill and Elevator Co. v. St. Louis, S. W. R. Co. et al. 15 I. C. C. Rep. 138. (Jan. 5, 1909.)

Complaint of unreasonable milling-in-transit rate from wheat fields in Oklahoma to points on the cotton belt in Texas, via Sherman and Celina.

Celina was an intermediate and local station on the line of the Frisco in Texas, 28 miles south of Sherman and 27 miles north of Carrollton. The line running between Sherman and Carrollton through Celina formed the base of a triangle joining the main line from Oklahoma wheat points to the cotton belt region. Wheat to be

ground at the complainant's mills at Celina would have to be taken from there through Sherman and Carrollton to Celina, and after grinding, hauled back again to the main line, and so sent onward. This would involve an extra haul of 56 miles when the wheat came via Sherman. Complainant insisted that this haul should be made free of charge, but the defendant made an extra charge of 2c. per 100 lbs. On the average haul, the charge of 2c. for 56 miles was a lower rate per ton mile than that charged on the entire shipment.

Held, (Harlan, C.), (a) that the Commission saw no reason why this extra service should be performed by the defendants free of charge;

(b) that 2c. per 100 lbs. was a reasonable charge for the service.

760-A.—Riverside Mills v. Atlantic Coast Line R. Co. 168 Fed. 987. C. C. S. D. Ga. N. E. D. (Jan. 14, 1909.)

Demurrer to action for damages under Section 20 of the Act against an initial carrier for non delivery of goods at destination.

The demurrer was based on the fact that Section 20 was unconstitutional under the Fifth Amendment to the Constitution, as depriving the railroad of its property without due process of law. From Judge Spier's opinion it would seem that as to intrastate business there was a Georgia statute to the effect that the delivering carrier was responsible for losses on connecting lines, the Interstate Commerce Act reversing the process and making the initial carrier responsible.

Held, (Spier, D. J.), (orally) that Section 20 or the Act was a reasonable and proper regulation of interstate commerce in that it afforded to the shipper an inexpensive and convenient tribunal in which to seek enforcement of his right, preserving to the defendant all proper defences which it might have the right to make.

Demurrer overruled.

760-B.—Riverside Mills v. Atlantic Coast Line R. Co. 168 Fed. 990. C. C. S. D. Ga. N. E. D. (April 2, 1909.)

Claim for attorney's fee under Section 8 of the Act, in action for damages under Section 20 against initial carrier, for non-delivery of goods at destination.

Held, (Spier, D. J.), (a) that the provision allowing an attorney's fee to shippers in cases where the Act had been violated by the defendant was reasonable as intended to prevent unreasonable delay and arbitrary refusal on the part of the carrier in paying such claim;

(b) that in respect to interstate business Congress had the same power to provide as it were a penalty for refusal by the carrier to pay just claims as the state had in case of intrastate business.

(Citing and relying on *Seaboard Air Line Ry. v. Seegers*, 207 U. S. 73, 28 Sup. Ct. 28, 52 L. Ed. 108).

Attorney's fee of \$100 allowed to plaintiff's attorneys.

761.—Parlin & Orendorff v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 145. (Dec. 14, 1908.)

Complaint of unreasonable charge on buggies and wagons from East St. Louis to Beele, Ark., and demand for reparation.

For some years prior to the shipment in question there had been in effect a commodity rate of 30c. applying to this traffic, but this rate had been withdrawn for a short time during which the shipment in question was made and the class rate of 73c. applied. The defendant proposed to put in a rate of 39c. per 100 lbs., and was willing to award reparation on that basis.

Held, (Harlan, C.), that the 73c. rate was unreasonable and excessive and should not have exceeded 39c., and reparation would be awarded accordingly.

763.—Washer Grain Co. v. Missouri Pacific R. Co. 15 I. C. C. Rep. 147. (Jan. 6, 1909.)

Complaint of unjust discrimination in allowing free commercial elevation at Coffeyville and Leavenworth, Kansas, and at Kansas City, Mo., while refusing the same or money compensation therefor at Atchison, Kas., and demand for reparation.

The free service performed by the defendant at the preferred towns consisted in not only transferring the grain from one car to another through an elevator for periods not exceeding ten days, but also in cleaning, mixing, clipping, etc. The discrimination against complainant and the City of Atchison, had continued until July 15, 1907, when an elevation allowance of $\frac{3}{4}$ c. per 100 lbs. was put in force at Atchison in compliance with an order by the Commission (477). The complainant demanded reparation on account of the discrimination during the period when the allowance was refused. Items in the claim include interest and depreciation of plant, operating expenses, salary of president and secretary, loss of business, damages on account of loss of prestige, and good will, costs and counsel fees.

Held, (Cockrell, C.), (in an opinion explaining the distinction between elevation in the transportation sense and elevation in the commercial sense) (a) that the Commission had no power to award an attorney's fee, that being restricted to proceedings in the courts;

(b) that the Commission had power to award damages not only for charging an unreasonable rate, but also for discrimination;

(c) (semble) that the Commission had primary jurisdiction to consider questions of unjust discrimination or undue preference, and to award reparation or damages in connection therewith;

(d) that the Commission would not award damages except where the same were clearly proved and capable of mathematical calcula-

tion, and that most of the damages claimed in the present case were not sufficiently definite and could not be awarded;

(e) that damages would be awarded based on the amount of shipments during the period of discrimination on the basis of $\frac{3}{4}$ c. per 100 lbs., with interest from the date of the filing of the complaint.

Order accordingly.

764-A.—Central R. Co. of New Jersey v. Hite and Raffeto. 166 Fed. 976. C. C. E. D. Pa. (Jan. 28, 1909.)

Rule to open judgment on verdict for plaintiffs for demurrage charges on coal cars in shipments from points in West Virginia and Pennsylvania to New Jersey.

The tariff rule under which the demurrage was exacted provided that the demurrage should run between the "date of arrival of each car and the date released." The defendants contended that the "date of arrival" was not when the car in fact arrived at the point of destination, but was the date on which the consignee received notice of its arrival.

Held, (J. B. McPherson, C. J.), (a) that the court had jurisdiction to pass upon the construction of the tariff in question in a case like the present, although the Commission would have exclusive jurisdiction to pass on the reasonableness of the rule;

(b) that the "date of arrival" was the date when the car in fact arrived at its destination and not the time of notice to the consignee, and the "date released" signified the date when the car became again available for use by the company.

Rule held open until April 1st, to enable the defendant to apply to the Commission to test the reasonableness of the rule in question, and subsequently, rule discharged.

764-B.—Hite et al. v. Central R. of New Jersey. 171 Fed. 370. C. C. A. 3rd Cir. (June 7, 1909.)

Appeal from the foregoing.

Held, (Gray, C. J.), (a) that although the courts had no authority to pass upon the reasonableness of a rate or charge prior to the action by the Commission, in the present case the court was asked merely to construe the demurrage regulation without regard to its reasonableness or unreasonableness;

(b) that the words "date of arrival of each car" meant "date of arrival at the company's yards," not the date on which the notice of arrival was received by the shipper from the defendant;

(c) that the words "date released" referred to the time at which the shipper notified the company that his vessel was ready to receive the coal from the cars, thereby releasing it from the duty of longer holding them on its tracks for the convenience of the shipper, and did not refer to the date when the car was actually unloaded.

Order of court below reversed and case remanded with directions for further proceedings in conformity with this opinion.

766.—American Creosoting Works, Ltd. v. Illinois Central R. Co. et al. 15 I. C. C. Rep. 160. (Feb. 1, 1909.)

Complaint of unreasonable demurrage charges at New Orleans, La., by reason of bunching of cars.

Complainants had made a request for 200 empty flat cars to be delivered at the rate of four a day. These were not delivered at the specified rate, on many days no cars being furnished, and on some days, more than four, but it did not appear that complainants protested against the method of delivery, and it was shown that on a number of the occasions when more than four cars had been delivered, the complainants had loaded them up without demurrage, while on other days, demurrage had accrued, even though a less number was delivered.

Held, (Clark, C.), that although it was the duty of the carrier to accommodate the needs and necessities of its shippers as nearly as possible without discrimination, and although it would be reasonable to provide a tariff rule that in the event of the carrier's bunching a shipper's cars demurrage would not accrue, yet, as there was no such tariff provision in this case and as it did not clearly appear that complainant had been injured by the method of delivery of cars, or that he had protested, the Commission could not find on the whole record that the charges assessed were unreasonable or unjust.

Complaint dismissed.

767.—Taylor v. Missouri Pacific R. Co. 15 I. C. C. Rep. 165. (Feb. 1, 1909.)

Petition for reparation for unreasonable charge on lumber from Atkins, Ark., to Briggs, Oklahoma.

The case had been set for hearing and the complainant notified but he failed to appear either in person or by counsel.

Held, (Lane, C.), (a) that "while it is true that the Act of Regulate Commerce does not presume to cast the burden of proof upon the complainant to establish the unreasonableness of a rate complained of, as would be the case in a court of law, nevertheless, a complainant before this Commission is not relieved of all responsibility as to his case upon the mere filing of a complaint;"

(b) that as the complainant had not appeared to establish facts on which the award of damages might be made in his favor or to prove the allegations of his complaint, the latter would be dismissed.

768.—Marble Falls Insulator Pin Co. v. Houston & T. C. R. Co. et al. 15 I. C. C. Rep. 167. (Feb. 1, 1909.)

Complaint of unreasonable rate on cedar insulator pins from Marble Falls, Tex., to St. Louis, Mo., and demand for reparation.

The car in question was delivered without routing instructions. The through tariff in force at the time provided a rate of 46c. There was in effect, however, an intrastate rate from Marble Falls to McNeal, Tex., which, combined with an interstate rate from McNeal to St. Louis (a junction *via* which the carriers in question had no joint rates and no division of freight based on that point), produced a rate of 35c. The intrastate rate was that prescribed by the Texas Commission. The complaint was based solely on the comparison of these rates.

Held, (Cockrell, C.), that the unreasonableness of a through rate could not be determined, in the absence of other evidence, by a mere comparison therewith of a lower aggregate of rates consisting of a local intrastate rate prescribed by a State Commission plus an independent interstate rate based upon a junction point through which the carriers had no joint rate, and no division of freights.

Complaint dismissed.

769-A.—Lyne v. Delaware, L. W. R. Co. 170 Fed. 847. C. C. D. N. J. (July 9, 1908.)

Demurrer to declaration in action at law by shippers for damages for discrimination in the allowance of free time to complainant's competitors in defendant's Newark freight yard, and denial of same to complainants.

The declaration averred that between November 15, 1901, and November 1, 1906, defendant had in effect a public storage charge of \$1.00 per car per day after the expiration of forty-eight hours, that during this period it allowed Bahrenburg & Bro., business competitors of complainants, the privilege of peddling vegetables from cars in the Newark freight yard after the expiration of the free time, while refusing the same privilege to complainants. The defendants had also informed the complainant that B. & Bro. had a lease of part of the freight yard, but refused to allow complainant a similar lease.

Held, (Lanning, D. J.), (a) that there were two methods of procedure for the recovery of damages resulting from violation of the Interstate Commerce Act, the one as prescribed by section 9 of the Act of 1887, before the court, and the other as prescribed sections 13, 14, 15, 16, before the Commission.

(b) that since the present action was founded on section 9, the limitation provision of section 16 was inapplicable, since it referred only to proceedings before the Commission;

(c) that as to whether the limitation in actions under section 9 was that provided by the state law or by section 1047 of the Revised Statutes, was not herein decided;

(d) that the statement of claim showed a good cause of action, there being a distinction between suits for unreasonable rates and those for discrimination, in the latter case the court not being bound

to award any damages which would reduce the ultimate rate below that described in the tariff.

Demurrer overruled.

771-A.—Woodward & Dickerson v. Louisville & N. R. Co. et al.
15 I. C. C. Rep. 170. (Feb. 1, 1909.)

Demand for reparation on account of misrouting of phosphate rock shipped from St. Blaise, Tenn., to Riddlesburg, Pa.

The published rate over the route directed was \$3.45 per gross ton. The Louisville & Nashville R. Co., however, owing to congestion of traffic, diverted the freight over a route by which this through rate did not apply. The shipments in question were made in November and December, 1905, and the formal complaint filed on September 8, 1908. On September 5, 1907, however, the matter was informally called to the attention of the Commission by the complainant. In their bills of lading, the carriers provided that they should have the right, in case of necessity, to forward freight by a different route from that which it would ordinarily take, but this provision was not contained in the tariffs.

Held, (Lane C.), (a) that the informal complaint on September 5, 1907, stopped the running of the Statute of Limitations;

(b) that although the Act did not specifically give to the Commission the power to award damages for misrouting, such power was clearly and necessarily implied from the provisions that carriers may make joint rates and publish the same together with all privileges extended and "any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee" (section 6);

(c) that the provision in the bill of lading was void as being outside of the terms of the tariff;

(d) that for the present the Commission would not modify its Administrative Rulings Nos. 60, 70, and 83, but that the carriers might, if they saw fit, make an informal complaint as to the fairness of these rulings.

Order for reparation accordingly.

771-B.—Woodward & Dickerson v. Louisville & Nashville R. Co. et al. 17 I. C. C. Rep. 9. (June 28, 1909.)

Re-hearing of the above.

After consideration of the petition for re-hearing in the above,—

Held, (Knapp, Ch.), that the Commission adhered to its former ruling in other cases (685), (790), to the effect that the two-year limitation was applicable to claims accruing prior to August 26th, 1906.

Petition for re-hearing denied.

772.—Hydraulic Press Brick Co. v. Vandalia R. Co. et al. 15 I. C. C. Rep. 175. (Feb. 1, 1909.)

Complaint of unreasonable charge on pressed brick from Collinsville, Ill., to Galveston, Tex., and demand for reparation.

The defendants admitted that the charge exacted of 27c. per 100 lbs. was unreasonable to the extent of 4c., and were willing to make reparation in that amount, but desired that no order should be made establishing that rate for the future.

Held, (Prouty, C.), that although ordinarily the Commission would not permit an award of damages based on an unreasonable rate, without the establishment of that rate to all shippers, yet, in the present case, as the rates in question were being investigated in another matter, it would order the refund of the excess as agreed with 6% interest from the date of payment without requiring the establishment of the 23c. rate for the future.

774.—Pilant v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 178. (Feb. 1, 1909.)

Demand for reparation on account of unreasonable charge on beer from Milwaukee, Wis., to Roswell, New Mexico.

The complaint was based on the fact that the rate charged to Roswell was 78c. while that to El Paso, a more distant point, was but 60c. The competitive conditions, however, at El Paso were different. Later the rate in question had been reduced to 72c.

Held, (Lane, C.), (a) that the greater charge to Roswell than that to El Paso, a more distant point, was justified by the different competitive conditions at the two localities;

(b) that when carriers had of their own volition made a reduction of rates; it was not the practice of the Commission to award reparation as a matter of course on all shipments made previous to the reduction, since such a policy would operate as the strongest possible deterrent to the voluntary reduction of rates.

Complaint dismissed.

775.—Lindsay Brothers v. Grand Rapids & Indiana R. Co. et al. 15 I. C. C. p. 182. (Feb. 1, 1909.)

Complaint of unreasonable charge on engines and boilers from Kalamazoo, Mich., to Woodford and Argyle, Wis., and demand for reparation.

The complaint was based on the fact that the through rates charged exceeded the combination of the locals. The defendants admitted that rates equal to the sum of the local rates were reasonable.

Held, (Lane, C.), that through rates equal to the sum of the locals should be established and reparation awarded on that basis.

Order accordingly.

776.—*Payne et al. v. Morgan's L. & T. R. & S. S. Co. et al.* 15 I. C. C. Rep. 185. (Feb. 1, 1909.)

Complaint of unreasonable charge on bananas from New Orleans, La., to El Paso, Tex., and demand for reparation.

The rate in question was 82c. per 100 lbs. The bananas shipped to complainant were all brought by the United Fruit Co. from Central America to New Orleans in its own steamers, and there turned over to the Fruit Dispatch Co. for distribution in the United States. During a part of the period when the shipments in question were made, there was in effect from New Orleans a rate of 64c., applicable to "import traffic."

Held, (Clark, C.), (a) that although the term "import traffic" was susceptible of misunderstanding, and although the tariff should be made clearer on the point, yet under the circumstances the provision for import traffic did not apply to the traffic in question, since this was a purely local shipment from New Orleans to El Paso;

(b) that under the decision in *Topeka Banana Dealers' Association v. St. Louis & S. F. R. Co.* (653) the 82c. rate was not unreasonable.

Complaint dismissed.

777.—*Duluth Log Co. v. Minnesota & I. R. Co. et al.* 15 I. C. C. Rep. 192. (Feb. 1, 1909.)

Demand for reparation on account of misrouting a shipment of poles from Laporte, Minn., to Louisville, Ky., and for refusal to make an allowance in weight for stakes in accordance with the published tariff.

There was no dispute as to the facts. The misrouting occurred through the fault of the agent of the Northern Pacific. All the other defendants except the Minnesota & I. R. Co. were parties to tariffs providing an allowance of 500 lbs. for stakes, and there had been a general agreement amongst all the carriers that this allowance should be made.

Held, (Clark, C.), (a) that the Northern Pacific should reimburse the complainant for the excess charge on account of misrouting without recourse to any other carrier;

(b) that the other defendants should pay the complainant the excess charged on account of failure to observe the provision allowing 500 pounds in weight for stakes.

Order accordingly.

778.—*Barrett Mfg. Co. v. Louisville & N. R. Co. et al.* 15 I. C. C. Rep. 196. (Feb. 1, 1909.)

Complaint of unreasonable rate and classification of coal tar paving cement between Ensley, Ala., and Lagrange, Ga., and demand for reparation.

In the defendants' tariffs, coal tar pitch was given a rate of 16.5

cents per 100 lbs. and coal tar paving cement was provided for only by the class rate of 30c. per 100 lbs. Coal tar pitch and coal tar paving cement were so similar that even a trained inspector could not tell the difference by inspection. The shipments in question had by mistake been transported at a rate not shown in any tariff, but in excess of 16.5 cents per 100 lbs.

Held, (Clark, C.), (a) that no reason was presented for a difference in transportation charges on coal tar pitch and coal tar paving cement, and that the latter should be given a 16.5 cent rate;

(b) that reparation should be awarded on the basis of the 16.5c. rate.

Order accordingly.

779.—Montgomery Freight Bureau v. Western R. of Alabama et al.
15 I. C. C. Rep. 199. (Feb. 1, 1909.)

Complaint of unreasonable rate on fertilizer from Montgomery, Ala., to Mississippi points.

After complaint, the rates were reduced and the complaint was dismissed on the motion of the complainant.

781.—In re—When Does a Cause of Action Accrue Under the Act to Regulate Commerce? 15 I. C. C. Rep. 201. (Feb. 2, 1909.)

Held, (Cockrell, C.), (a) that "in complaints for the recovery of damages caused by charges of rates unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, the cause of action accrues when the payment is made;"

(b) that "in any other complaints for the recovery of damages for alleged violations of the interstate commerce laws of which this Commission has jurisdiction, the cause of action accrues when the carrier does the unlawful act or fails to do what the law requires, on account of which damages are claimed."

No order.

782.—In re Jurisdiction Over Water Carriers. 15 I. C. C. Rep. 205. (Jan. 7, 1909.)

Under Conference Ruling No. 2, dated May 2, 1908, the Commission had held that when a water line united with a railroad in making a through route and joint rate on particular traffic, it thereby made all its interstate traffic subject to the provisions of the Act, and to the jurisdiction of the Commission. On application by numerous steamship lines for a reconsideration of the above findings.

Held, (Knapp, Ch.), that in view of the history of the Act, it was evident that Congress did not intend to regulate the charges exacted upon the port-to-port business of water carriers, and that the latter were subject to the law only as to such traffic as was transported under common control, management or arrangement with a

rail carrier, and as to traffic not so transported, they were exempt from its provisions.

Cockrell, C., delivered a concurring opinion. Clark, C., Clements, C., and Harlan, C., dissented.

783.—Washington Broom, etc. Co. v. Chicago, R. I. & P. R. Co.
15 I. C. C. Rep. 219. (Feb. 1, 1909.)

Demand for reparation on account of misrouting a shipment of broom corn between Duncan, Okla., and Wichita, Kas., and Seattle, Wash.

The shipment in question was received by the Rock Island at Duncan, Okla., and hauled under local billing to Wichita, Kas., where the consignee reconsigned it to Seattle. The proper routing was for the Rock Island to deliver the car to the Burlington at Beatrice, Nev., through which junction there was a published joint through rate of \$1.25 per 100 lbs. Instead of this, however, the Rock Island hauled the corn on to St. Josephs, and there turned it over to the Burlington, making necessary the payment of local rates into and out of St. Josephs at \$1.57½ per 100 lbs. Neither the Burlington nor the Northern Pacific, participating carriers, were joined as defendants. The defendant contended that the shipment was a through movement from Duncan, and that all the participating carriers ought to join in refunding the overcharge.

Held, (Harlan, C.), (a) that the shipment to Wichita was a local one;

(b) that the connecting lines in no wise participated in the defendant's negligence in misrouting the shipment, and need not participate, therefore, in the payment of complainant's claim.

(c) that the Rock Island should refund the excess charge resulting from the misrouting of the freight by its agent.

Order accordingly.

784.—Barton, etc. Co. v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 222. (Feb. 1, 1909.)

Complaint of unreasonable rate on uncompressed cotton from Vincent, Ark., to Memphis, Tenn., and demand for reparation.

The rate charged was 20c. per 100 lbs. It appeared that for a number of years prior to 1907, the 12c. rate had voluntarily been maintained by defendant, and that other carriers from points adjacent to Memphis were maintaining rates lower than defendant's.

Held, (Harlan, C.), (a) that the 20c. rate was unreasonable and that 15c. would have been and would now be a reasonable rate;

(b) that the matter of reparation would be left for the present to await the voluntary adjustment of the parties.

Order accordingly.

785.—**Jones & Sons Co. v. Boston & A. R. Co. et al.** 15 I. C. C. Rep. 226. (Feb. 2, 1909.)

Complaint of unreasonable rate on paper mill machinery in car loads from Pittsfield, Mass., to Millinocket, Me., and demand for reparation.

The rate charged was 36.32c. per 100 lbs. Subsequently, a 23c. rate was put in force. Defendants signified their willingness to make reparation on past shipments by complainants on this basis.

Held, (Clements, C.), that the order would be entered accordingly, the 23c. rate to be maintained for two years.

787.—**Williamson v. Oregon, S. L. R. Co. et al.** 15 I. C. C. Rep. 228. (Feb. 1, 1909.)

Demand for reparation on account of excessive charges on wheat from Wooley's Spur, Idaho, to McKinney, Tex.

By Special Circular No. 6, of the Commission's Tariff Department, it had reiterated the principle that tariffs should be definite and free from ambiguity, but in recognition of the fact that many tariffs filed prior to May 1, 1907, contained long-and-short-haul clauses, maximum rules, etc., and in view of the difficulty in reforming the tariffs immediately, it was held that the carriers might, until October, 1, 1908, continue to use tariffs issued prior to January 15th, containing rules of this nature. On July 17, 1907, the date of the shipment in question, the rate from Wooley's Spur to McKinney was made up of a combination on Junction City of 50c. plus 38½c. At the same time, there was in effect a joint through rate of 60c. on wheat passing over the same route from Idaho Falls to McKinney, through Wooley's Spur, and the defendants admitted that it had been their custom to apply the through rate from intermediate points from which no through rate was published.

Held, (Harlan, C.), that although all shipments moving after October 1, 1908, must take the specific rates and fares provided in tariffs regardless of any customs or ambiguous provisions, yet under the circular above referred to, the complainant was here entitled to reparation in the amount of the difference between the rate paid and the through rate properly applicable, with interest from the date of collection.

Order accordingly.

788.—**Keich Mfg. Co. v. St. Louis & S. F. R. Co.** 15 I. C. C. Rep. 230. (Feb. 1, 1909.)

Demand for reparation for unreasonable charge on shingles from Lake City, Ark., to Koshkonong, Mo.

The rate to Springfield, a point beyond Koshkonong, was 55½c. in excess of that to Koshkonong, although the traffic to the former point proceeded through the latter.

Held, (Harlan, C.), that on the authority of Rule 83 of Tariff

Circular 15-A and of Special Circular No. 6, explained above in *Williamson v. Oregon Short Line R. Co. et al.* (787), adjustment might be made by the parties on a basis of the through rate to the more distant point.

Order accordingly.

789.—*United States v. New York, P. & N. R. Co. et al.* 15 I. C. C. Rep. 233. (Feb. 2, 1909.)

Complaint of unreasonable rate on ball cartridges and saluting powder from Norfolk, Va., to Annapolis, Md., and demand for reparation.

The rates in question were 57c. and \$1.30 respectively. Subsequent to the filing of the complaint, rates of 36c. and 74c. were put in effect. Defendants admitted the unreasonableness of the former charges.

Held, (Clements, C.), that an order would be entered allowing reparation on the basis of the reduced rates and requiring their maintenance for two years.

790.—*Kile & Morgan Co. v. Deepwater R. Co. et al.* 15 I. C. C. Rep. 235. (Feb. 2, 1909.)

Complaint of excessive charge, by reason of misrouting a carload of lumber from Harper, W. Va., to New Haven, Conn.

The shipment in question was made on May 26, 1906, and was specifically routed via the Star Union Line and the Harlem River, which would have caused the shipment to reach the New York, New Haven & Hartford line at the Harlem River. Complainant had made an arrangement with the agent of the latter company to divert this car at Nashua, N. H., under an arrangement for reconsigning to New England points without extra charge. The Chesapeake & Ohio routed the shipment via Cincinnati and the White Line, causing it to reach New Haven without going by way of the Harlem River, and necessitating an additional local charge of \$50.85 to secure delivery at Nashua. Defendant admitted the misrouting but contended that it should be held liable only for such consequences as it might have foreseen or reasonably anticipated. It also contended that the Statute of Limitations prevented recovery. The complainant relied upon a circular issued by the defendant providing for reconsignment. This circular was not contained in the published tariffs, and it also provided for its cancellation at the carrier's option and required the signature of the shipper to make it effective.

Held, (Clements, C.), (a) that the cause of action, if any, accrued on the date the freight charges were paid;

(b) that all claims, whether arising prior or subsequent to August 28, 1906, were entitled to two years for presentation, the one year proviso applying only to claims accruing more than two years prior to that date;

(c) that carriers at fault for misrouting were liable for damages represented by higher charges than would have been lawfully assessed had the misrouting not occurred, and not merely for such damage only as could be reasonably seen or anticipated;

(d) that the circular in question was no part of the tariff charges which all parties were bound to observe, and rates in accordance with it could not be made the basis of a claim for reparation;

(e) that even if it had been filed, it was inconsistent with the law in giving the carrier the option of cancellation and requiring the signature of the shipper.

Complaint dismissed.

791.—**Joice & Co. v. Illinois Central R. Co. et al.** 15 I. C. C. Rep. 239. (Jan. 27, 1909.)

Demand for reparation on the basis of the order issued by the Commission in *Nicola, etc. Co. v. Louisville & Nashville R. Co.* (685.)

One hundred and thirteen supplemental complaints were disposed of together in this proceeding, the complainants and the defendants agreed to settle the same on the payment by the latter of \$165,000.

Held, (Clements, C.), that as the agreement contained no provisions inconsistent with the law, it would be approved as a basis for final settlement and satisfaction in so far as it related to matters within the Commission's jurisdiction.

792.—**Hafey v. St. Louis & S. F. R. Co. et al.** 15 I. C. C. Rep. 245. (Feb. 2, 1909.)

Complaint of unreasonable rate on petroleum from Paola, Kas., to Kansas City, Kas., via Missouri.

The main grounds on which the complainant rested the case were: First, that the rate in question exceeded the rate established for a similar distance by the Kansas Legislature, and, second, that the quality of complainant's petroleum was such as to entitle it to a rate less than that allowed to other more valuable petroleum with which he was in competition. Evidence was also offered of rates from other localities. On the distance scale provided by the Kansas Commission, the rate would have been 5½¢, whereas it was in fact 8¢.

Held, (Knapp, Ch.), (a) that although value was an important element in fixing rates, as affecting the value of the service to the shipper, yet value could be considered only within certain limits, and when a carrier had established a reasonable rate for the transportation of a given commodity, it could not be required to change that rate in accordance with the differing values of the same commodity as produced by different shippers;

(b) that although rates prescribed by state authorities were valu-

able for purposes of comparison, they were not conclusive of the unreasonableness of a relatively higher interstate rate;

(c) that on all the evidence, the 8c. rate was unreasonable and should not exceed 7c., but need not be reduced to a basis of the rates prescribed by the Kansas Commission.

Order accordingly.

793.—Crane R. Co. v. Philadelphia & R. R. Co. et al. 15 I. C. C. Rep. 248. (Feb. 2, 1909.)

Petition for the establishment of through route and joint rate on interstate shipments from the complainant's plant at Catasauqua, Pa., and for a \$2 division of through rates to the complainant.

The works of the Crane Iron Co. were situated at Catasauqua and were connected with the defendant's line by the tracks of the Crane Railroad Co. The stock of both the railroad and the iron company were owned by the Empire Steel & Iron Co. The entire trackage of the complainant company was about 1.9 miles long, including all the branches. It had five engines and eleven wooden dump cars which were not designed for use in general traffic and not permitted to pass off complainant's tracks. It did not maintain a public freight station or bill freight from any point on its line. It, however, did switching for five industries located on its track other than the Crane Iron Works, and for this service received \$2 per car. It had filed a tariff and made reports to the Commission showing rates for car switching service to certain industries only. It appeared that the rates to Catasauqua had been made low by defendant in consideration of the fact that switching would be done by the complainant to the Crane Iron Works which received and shipped three-fourths of the total traffic at Catasauqua.

Held, (Knapp, Ch.), (a) that the mere fact that complainant's railroad was owned by the corporation which also owned the stock of the largest shipper over it, and which was originally organized and built for the purpose of doing the work of that shipper, was not controlling against its being held a common carrier;

(b) that under the evidence, however, the complainant was not a common carrier subject to the Act;

(c) that even were it such a carrier, the needs and conveniences of the community did not warrant the establishment of a through route and joint rates by the defendant in connection with it.

Complaint dismissed.

See also 1146.

794.—Royal Brewing Co. v. Adams Express Co. et al. 15 I. C. C. Rep. 255. (Feb. 2, 1909.)

Complaint of refusal by defendant to receive C. O. D. packages of intoxicating liquors and to collect the purchase price of the same

from the consignee, although performing this service with regard to other commodities.

The reason given by the defendant for refusing to receive C. O. D. packages of liquor, was that this service was unusually burdensome to it in that much of the liquor traffic to prohibition states was done by shippers on speculation to fictitious consignees, in the hope that the shipment would be sold by agents after arrival. The consequent storage of the liquor in the defendant's warehouses resulted in temptation to employes and in much burdensome litigation on the part of the state authorities.

Held, (Knapp, Ch.), that without deciding whether any C. O. D. business had become a part of the legal duty of an express company, in the present case the different circumstances and conditions surrounding the liquor traffic made it reasonable for the defendant to refuse C. O. D. shipments of this commodity, although accepting other C. O. D. shipments, and such refusal was not an undue preference or an unjust discrimination.

Complaint dismissed.

795.—Yawman & Erbe Mfg. Company v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 260. (Feb. 2, 1909.)

Complaint of unreasonable rate and classification on roller letter copiers from Rochester, N. Y., to points in Western Classification Territory.

The Rapid Roller Letter Co. patented machines, manufactured by complainant, were rated at 1½ times first class, while the ordinary letter press, which was sold in competition with complainant's machine, took second class rates. The complainant's machine, however, occupied nearly twice as much space as the old style press of the same weight, and was worth nearly four times as much. The amount of traffic in the complainant's machine was not shown accurately, but was comparatively insignificant.

Held, (Knapp, Ch.), that the evidence did not show that the rate and classification in question was unreasonable.

Complaint dismissed.

796.—Newark Shippers' & Receivers' Bureau v. New York, O. & W. R. Co. 15 I. C. C. Rep. 264. (Feb. 1, 1909.)

Complaint of unreasonable rate on stone in carloads from East Branch, N. Y., to Weehawken, N. J.

For ten years previous to October 22, 1907, the rate charged for the service in question was \$1.40 per net ton for a distance of 150 miles. On that date, the rate was increased by 20c. a ton. A number of the other carriers who had increased the rates on the same scale at this date, subsequently reduced them, but the defendant did not. It sought to justify the increase by an increase in the cost of labor and in the price of railway materials and supplies. The in-

crease in cost of labor and materials had been met by the defendant, not by a general revision of its rate schedules, but by imposing the burden on a few commodities only.

Held, (Harlan, C.), (a) that the long maintenance of the lower rate shifted the burden to the defendant to justify the increased charge;

(b) that an increase in the cost of labor and materials did not necessarily imply a decrease in net earnings, since the volume of the traffic might increase and operating expenses might, as a whole, decrease;

(c) that under all the evidence the former rate of \$1.40 appeared to be a reasonable one and should be established for the future.

Order accordingly.

797.—*Falls & Co. v. Chicago, R. I. & P. R. Co. et al.* 15 I. C. C. Rep. 269. (Feb. 1, 1909.)

Complaint of unreasonable charge on shipment of cotton linters from Malden, Mo., to Minneapolis, Minn., and demand for reparation.

The complainant had tendered to the defendant fifty bales of uncompressed cotton linters of an aggregate weight of 22,471 lbs., asking for a car large enough to take the entire shipment. No car was available of sufficient size, however, and the complainant was given two cars, one a 40-foot car, and the other a 36-foot car. Thirty bales were loaded into the former and the remaining twenty bales into the latter. Under the rates in force at the time, this resulted in a higher charge than could have been exacted if the entire shipment had gone in one car. On the facts shown in the record, there was apparently an undercharge on the shipment in question of \$5.15.

Held, (Harlan, C.), (a) that although in accepting a shipment the carrier ought to consider the convenience and interest of the shipper yet, nevertheless, as a matter of law, it was under obligation only to satisfy the requirements of its tariffs and not bound, in every case, to furnish a car large enough to take the shipment offered;

(b) that under the circumstances shown on this record, the defendant was guilty of no departure from the ordinary and reasonable practice of carriers in such matters;

(c) that although the Commission had no authority to require a shipper to make good an undercharge, the complainant would understand his liability under the law for a failure or refusal to pay the published rates on the shipment.

Complaint dismissed.

799.—*Beekman Lumber Co. v. St. Louis, I. M. & S. R. Co. et al.* 15 I. C. C. Rep. 274. (Feb. 1, 1909.)

Complaint of unreasonable rate on lumber from Gleason, Ark., to Dallas, Texas, and demand for reparation.

The shipment in question was made February 10, 1906, and the freight charge paid on February 28, 1909. The formal complaint was not filed until August 26, 1908, but on January 20, 1908, an informal complaint was forwarded to the Commission. At the time of the shipment, there was no joint through rate applicable to the traffic in question, and as a consequence, the Class "B" rate of 60c. per 100 lbs., with 30,000 lbs. minimum, was exacted. The defendants substantially agreed that a reasonable rate would have been 21c. per 100 lbs.

Held, (Harlan, C.), (a) that the informal presentation of the complaint stopped the running of the Statute of Limitations;

(b) that reparation should be made on the basis of the 21c. rate.

Order accordingly.

800.—Bowman-Kranz Lumber Co. et al. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 277. (Feb. 8, 1909.)

Demand for reparation by reason of unreasonable charge on shipments of lumber from Omaha, Neb., to Canton, S. Dak.; on rye flour from Janesville, Wis., to Kansas City, Mo., and on iron bars from East Chicago, Ind., to Moline, Ill.

The defendants admitted the validity of the complaint and the Commission issued an order requiring the payment of the amounts specified.

801.—Gough & Co. v. Illinois C. R. Co. 15 I. C. C. Rep. 280. (Feb. 8, 1909.)

Complaint of unreasonable storage charges on brewers' rice at New Orleans, La.

The charge in question was 1c. per 100 lbs. for the first ten days after 48 hours free time, and $\frac{3}{4}$ c. for each additional ten days or fraction thereof. Defendant had elaborate storage facilities at New Orleans, and the use of such facilities resulted in the shipper's being allowed to reconsign at the balance of the through rate from New Orleans to destination instead of having to pay the local rates.

Held, (Knapp, Ch.), (a) that storage charges are imposed, not for revenue merely, but for the purpose of keeping tracks and terminal facilities clear;

(b) that in view of the incidental advantages to the complainant by the use of the storage charges, the same were not unreasonable.

Complaint dismissed.

802.—Lindsay Bros. v. Lake Shore & M. S. R. Co. et al. 15 I. C. C. Rep. 284. (Feb. 12, 1909.)

Complaint of unreasonable rate on steel tanks from Goshen, Ind., to Sullivan, Wis., and demand for reparation.

The joint rate for the shipment in question was \$1.49 per 100 lbs., while the combination of local rates on Waukesha were but 97c. The defendants admitted that the rates collected were excessive.

Held, (Prouty, C.), that reparation should be awarded on the basis of the 97c. rate with interest from the date of payment, and the same should be maintained for two years.

Order accordingly.

803.—Black Mountain Coal Land Co. et al. v. Southern Railway Co. et al. 15 I. C. C. Rep. 286. (Feb. 8, 1909.)

Complaint of unreasonable rates from the Black Mountain Coal District in Virginia as compared to the rates from the Appalachia District, and with the rates from Coal Creek, Jellico, Wilder and other points in Southern Kentucky and Eastern Tennessee to southern and southeastern points.

Coal from the Black Mountain District and from the Appalachia District, destined to southern points, went by way of Intermont. In 1905, the complainants had entered into a contract with the interests then owning the railroad reaching their mines, by which the differential in favor of the Appalachia District was not to exceed 10c. It was this differential which was now complained of. It appeared that coal from the Appalachia District was delivered at Intermont to the connecting carriers by the Interstate Railroad and for this service the Southern Co. paid 10c. per ton, while the Appalachia operator paid only the Intermont rate. The Black Mountain operator, however, was charged 10c. per ton for transporting his coal to Intermont. As regards the alleged discrimination in favor of Jellico, Coal Creek, Middlesboro and Wilder over rates from Appalachia and Black Mountain, it appeared that the distance from Coal Creek, etc., to Morristown, the junction point where shipments from all the points in question converged, was somewhat less than from the Appalachia and Black Mountain mines. Also, the operating expenses over the lines from the latter point were higher than the expenses from the Coal Creek and other districts competing in the same consuming markets.

Held, (Knapp, Ch.), (a) that in view of all the facts, the 10c. differential in favor of Appalachia over Black Mountain was unreasonable, and should be abolished;

(b) that although some differential in favor of Coal Creek over Black Mountain and Appalachia was proper in view of the difference in distance and in operating expenses, yet this differential should not exceed 25c.

(c) that since it was a rule of well nigh universal application that as distance increases, difference in distance becomes relatively less important, the differential found to be proper at Morristown should not be exceeded at any destination point beyond in the territory here in question.

Order accordingly.

804.—Michigan Buggy Co. v. Grand Rapids & I. R. Co. et al. 15 I. C. C. Rep. 297. (Feb. 8, 1909.)

Complaint of unreasonable rates on cutters from Kalamazoo, Mich., to St. Paul, Minn., and demand for reparation.

The rate in question was 49.5c. per 100 lbs. The sum of the local rates in effect during the same period was 33.5c.

Held, (Clark, C.), (a) that although the Commission would not rule that a joint through rate exceeding the sum of the locals was conclusively presumed to be unreasonable, yet such a state of affairs threw the burden on the defendants to justify it, and no justification had been presented in this case;

(b) that since the practical effect of an order that the through rate should not exceed the sum of the locals would be to place in the hands of the defendants the power to nullify such order by increasing the locals, the order in the present case would be framed so as to prescribe a maximum joint through rate.

Order accordingly.

805.—Bennett v. Minneapolis, St. P. & S. Ste. M. R. Co. 15 I. C. C. Rep. 301. (Feb. 8, 1909.)

Complaint of unreasonable minimum weight on plate glass from St. Paul, Minn., to Douglas, N. Dak., and demand for reparation.

The tariffs of defendants had prescribed a minimum weight of 5,000 lbs. on plate glass in packages exceeding 7.5 feet high and 1.5 feet long. Apparently this rule had been made with a view to shipments in flat cars, for when shipments of plate glass were made in box cars, other commodities could safely be loaded with it. In the present case, the plate glass had been boxed and hauled in a box car, together with other commodities.

Held, (Clark, C.), (a) that without passing on the reasonableness of the 5,000 lb. minimum rule as applied to flat or gondola cars, where this commodity was transported in a box car, it should be hauled at its actual weight, subject, however, to the minimum weight for packages weighing less than 100 lbs.

(b) that the minimum weight of 5,000 lbs. here enforced was unreasonable and complainant was entitled to the reparation claimed.

Order accordingly.

806-A.—Mountain Ice Co. et al. v. Delaware, L. & W. R. Co. et al. 15 I. C. C. Rep. 305. (Feb. 2, 1909.)

Complaint of unreasonable rates on natural ice from harvest points in New Jersey and Pennsylvania, to New York, Hoboken, Jersey City, Philadelphia, etc., and demand for reparation.

The principal rates in question were those from the so-called Jersey points to Hoboken, and from the Pocono Mountain points to Jersey City, Hoboken and Philadelphia. The ice business was be-

gun about 1891, when the rates were fixed at 31c. from Jersey points and 41c. from mountain points to Hoboken, and from mountain points to Philadelphia \$1.20 through the winter and \$1.08 during the warm season. These rates continued in effect until 1899, when the rates to Hoboken were advanced to 50c. from Jersey points, and 65c. from Pocono Mountain points, but these rates were shortly reduced to 40c. and 55c. respectively, and continued so until 1900, when they were again advanced to 50c. and 65c. In 1903 there was a further advance of the mountain rate to Hoboken to 75c., while the Philadelphia rate was advanced during the entire season to \$1.25. In 1906, there was a still further advance, making the rate 60c. from Jersey points and 85c. from mountain points to Jersey City and Hoboken, and \$1.40 from mountain points to Philadelphia. The original rates to Hoboken were low and had been so constructed in order to stimulate the traffic. The complainants alleged that they had invested their money on the strength of the original rates and it was apparent that the complainants could not compete at the present rates. Complainants also asked that the defendants be required to furnish special equipment for the handling of this freight.

Held, (Prouty, C.), (a) that although this was an expensive service it was in no sense an expedited one and that the freight in question was desirable and easy to handle;

(b) that the establishment and voluntary maintenance of lower rates and the investment of capital on the strength of their maintenance was an important consideration;

(c) that although the original rates were perhaps low, the present rates were excessive and should not exceed 50c. per ton from Jersey points and 65c. from mountain points to Hoboken and Jersey City, and \$1.20 to Philadelphia (via Mauch Chunk) where the freight was hauled in ordinary box cars;

(d) that the present rate to Philadelphia via Phillipsburg would not be disturbed;

(e) that where special ice cars were used, these rates might be increased by 5, 10 and 15 cents per ton respectively;

(f) that reparation should be granted on the basis of the rates established.

Order accordingly.

806-B.—Mountain Ice Co. et al. v. Delaware, L. & W. R. Co. et al.
17 I. C. C. Rep. 447. (Jan. 3, 1910.)

Supplemental petition praying for the establishment of rates from points of origin in New Jersey and the Pocono Mountains to various destinations and for a reconsideration of the decision of the Commission in declining to reduce joint rates to Philadelphia.

In the foregoing case the Commission had merely fixed base rates and had directed that the defendants check in rates to the other points in conformity with the basis established. The rate from the

Pocono Mountains to New York was reduced from 85c. per ton to 65c. in box cars, and 75c. per ton in ice cars. The present complaint asked for the reduction of the rate from the Pocono Mountains and the New Jersey lakes to Brooklyn terminals; from these points to stations on the South Brooklyn Railway, and also to stations on the Morris and Essex division of the Delaware, Lackawanna & Western; for the reconsideration by the Commission of its decision refusing to reduce the rate from the Pocono Mountains to Philadelphia via Phillipsburg; for the reduction of rates via Erie Railroad from Sterling Forest, N. Y., to Jersey City, and also those to points on the Long Island Railroad; for the reduction of rates from the Pocono Mountains to the same points.

Held, (Prouty, C.), (a) that as the South Brooklyn Railway was not a party to the proceeding, no opinion could be expressed with reference to rates to points on its line;

(b) that rates to Brooklyn terminals should be reduced to figures named;

(c) that rates to points on the Delaware, Lackawanna & Western, and the Morris and Essex division, should be reduced to figures named, without reparation as to points on the latter division;

(d) that the rate from the Pocono Mountains to Philadelphia via Phillipsburg should be reduced to figures named, the reduction to apply to intermediate points as specified;

(e) that the rates from Sterling Forest and from the Pocono Mountains to Jersey City and to points on the Long Island Railroad should be reduced to figures named, without reparation;

(f) that as to all other stations to which rates were not fixed by the orders of the Commission either in the original proceedings or at this time, the complaint would be dismissed;

(g) that on application of the complainant an examiner would be delegated to take testimony on the various claims for reparation.

Order accordingly.

807.—*Cooper & Son v. Chicago, B. & Q. R. Co.* 15 I. C. C. Rep. 324. (Feb. 8, 1909.)

Complaint of unreasonable rates on corn from Humboldt, Neb., and Pawnee, Neb., to St. Francis and Atwood, Kas., and demand for reparation.

The rates in question were 19c. and 18c. respectively. During the same period, the rate from St. Francis and Atwood to Kansas City had been 13.6c., and in both Kansas and Nebraska the State prescribed rates for this distance would have been 12c. and 13c.

Held, (Prouty, C.), that the rates in question were unreasonable and should not have exceeded 13.6c., and that reparation would be awarded on this basis.

Order accordingly.

808.—Penrod Walnut & Veneer Co. v. Chicago, B. & Q. R. Co. et al.
15 I. C. C. Rep. 326. (Feb. 8, 1909.)

Complaint of unreasonable carload and less-than-carload rates on walnut veneer from Kansas to Chicago and Chicago points, and demand for reparation.

At the time of the filing of the complaint, the rates in question were 65c. in any quantity, but on November 6, 1908, shortly before the hearing, the rates were reduced to 27c. C. L. and 45c. L. C. L. Before entering into the arrangements for the manufacturing of the commodity so shipped, the defendant had inquired of the Burlington agent as to the rates, and had been informed that they were 27c. and 45c. respectively.

Held, (Prouty, C.), (a) that although the Commission would not necessarily award reparation on the basis of every rate reduced, yet, in the present case, the complainant had relied on the observance of a lower rate and had shipped on the understanding that he was ultimately to pay only that rate;

(b) that an order should be issued requiring the maintenance of the present rate for two years with an award of reparation on that basis.

809.—MacGillis & Gibbs Co. v. Chicago, M. & St. P. R. Co. et al.
15 I. C. C. Rep. 329. (Feb. 8, 1909.)

Complaint of unreasonable rate on cross ties from Sault Ste. Marie, Mich., to Thiensville, Wis., and demand for reparation.

The complaint was based on the fact that the joint through rate to Milwaukee, Wis., through Thiensville, was but 13c., whereas the rate to Thiensville was a combination of locals amounting to 20c. The latter rate had been made on a point intermediate to Thiensville. The local rate, however, from Milwaukee to Thiensville was 13c., making a combination on Milwaukee of 16c.

Held, (Prouty, C.), that although the conditions at Milwaukee were so dissimilar as to render a lower rate for the greater distance proper, yet the rate in question was unreasonable and should not exceed 16c. per 100 lbs.

Reparation awarded accordingly.

810.—Salmon Bros. & Co. v. New Orleans & Northeastern R. Co.
15 I. C. C. Rep. 332. (Feb. 9, 1909.)

Complaint of unreasonable charge on shipment of cotton linters from Meridian, Miss., to New Orleans, La., for export, and demand for reparation.

At the time of the shipment there were in effect two rates on cotton: the first a rate of 30c. per 100 lbs., value limited to 2c. per lb.; and the second a rate of 46c. per 100 lbs. unlimited. The latter rate was applicable primarily to cotton, while the lower rate usually applied to cotton linters. When complainant tendered the shipment

in question he asked the defendant agents to give him the lowest rate on cotton linters, and defendant assessed the 46c. rate.

Held, (Lane, C.), that it was the duty of the carrier's agent to apply the lower of the two rates and reparation would be awarded accordingly.

811.—Baltimore Chamber of Commerce v. Pennsylvania R. Co. et al. 15 I. C. C. Rep. 341. (Feb. 8, 1909.)

Complaint of unreasonable practice by defendants in exacting so-called "scaleage deductions" on grain at Baltimore.

It appeared that in handling grain at elevators during the process of elevation, a considerable amount of dirt, dust, moisture and chaff, gathered up in the harvest, was eliminated from the grain, so that there was a diminution or loss in weight in the same amount of grain when delivered out of the elevator. In view of this, the defendants published in their tariffs a stipulation providing that at Baltimore a certain deduction would be made from the amount of grain delivered on certificates issued. This deduction was a reasonable one and did not more than provide for the actual loss. It appeared that at a number of points no deductions on this account were made by the railroads.

Held, (Harlan, C.), (a) that since the scaleage deductions were reasonable and since under them it did not appear that the defendants were appropriating any of the complainant's grain to their own use, the scaleage deductions were not rates, charges or exactions within the meaning of the act or under the jurisdiction of the Commission;

(b) that as the practice in question was not a matter of rates the amount of the weight deduction need not be published in the defendant's tariffs;

(c) that the question of the preference of other localities over Baltimore was not considered, as the record had not been made with a view to the disposition of the complaint on that ground.

Case held open.

812.—General Chemical Co. v. Norfolk & W. R. Co. et al. 15 I. C. C. Rep. 349. (Feb. 1, 1909.)

Complaint of unreasonable charge on sulphite of iron from Pulaski, Va., to Edgewater, N. J., and demand for reparation.

The published tariffs named a through rate with a minimum basis on the marked capacity of the car. The complainant had ordered a car of 60,000 lbs. capacity. The Norfolk & Western, the initial carrier, did not find it convenient to furnish one of this capacity, and sent to the loading point an 80,000 lb. car.

Held, (Harlan, C.), (a) that under the rate as published the shipping public was offered its choice within reasonable limits as to the capacity of cars in which shipments should be made;

(b) that since the carrier had not furnished a car of the capacity required, it should make good to the complainant his loss by reason of this default.

Order accordingly.

813.—Bulte Milling Co. et al. v. Chicago & A. R. Co. et al. 15 I. C. C. Rep. 351. (Feb. 8, 1909.)

Complaint of unreasonable rates on grain and particularly on flour originating at Missouri River points and destined to the Atlantic Seaboard.

The proportion of the rate applying east of Chicago was not brought into the controversy, the complainants finding fault only with that proportion west of Chicago. The rates from the Missouri River to the seaboard on domestic flour were 29½c. and on export flour 25½c., while from Minneapolis they were 25c. and 21½c. respectively. The distance from Minneapolis and from Kansas City to New York is approximately the same. Out of the Minneapolis rate, the carriers west of Chicago received 8.3c. on domestic and 7½c. on export shipments, while in case of shipments from Kansas City, the western carriers received 12c. and 11.7c. respectively. This formed the main basis for the complaint. It appeared, however, that the Minneapolis rate was controlled by water competition via Duluth and the Great Lakes, this competition being important, especially from a potential point of view. Reliance was also placed by the complainant on an analysis of the proportions of the various rates received by the respective carriers. Complainants further asked that the rate on export flour be made lower than on export wheat in order to enable the American millers to compete with the foreign millers.

Held, (Harlan, C.), (a) that the Minneapolis rate was forced by water competition which did not exist at the Missouri River points;

(b) that although rates per ton-mile were often important, yet they were not the generally accepted basis for making up rates, nor were divisions of through rates conclusive as a sound final test of the reasonableness of a through rate;

(c) that it was not the Commission's function to foster the American millers as against the foreign ones;

(d) that as the eastern carriers were not parties to this proceeding, the reasonableness of the through rate could not be attacked.

Complaint dismissed without prejudice.

814.—Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. R. Co. et al. 15 I. C. C. Rep. 367. (Feb. 4, 1909.)

Complaint of the elimination of class proportional rates from Indianapolis to Ohio River crossings by the publication of higher commodity proportional rates and prayer that the latter be cancelled in order that the class rates might apply.

The main ground for the complaint was that it was illegal and improper for any commodity rate to exceed the class rate on the same article. The defendants claimed, however, that they had made the exceptions in question after full consideration of the peculiar conditions under which each excepted article was transported and used.

Held, (Clements, C.), (a) that although commodity rates were almost invariably lower than class rates, this was not an absolute rule and the ultimate question in each case was whether the rates assessed were reasonable and just;

(b) that the rates in question did not appear to be unreasonable.

Complaint dismissed.

815.—Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. R. Co. et al. 15 I. C. C. Rep. 370. (Feb. 8, 1909.)

Complaint of unreasonable minimum rule in regard to long ladders in Official Classification Territory, and of discrimination against Indianapolis in refusing the stopping-in-transit privilege accorded to Chicago, St. Louis and other points.

The Official Classification rule provided that ladders too long to load into 36-foot box cars through the side doors should be charged on the basis of a 4,000 lb. minimum. One dozen ladders of this kind actually weighed about 1800 lbs. They could be loaded in cars provided with end doors. It appeared that for a considerable time the defendants had disregarded the minimum rule as to ladders. After the hearing, several of the defendants issued tariffs allowing stoppage-in-transit of structural iron at Indianapolis for fabrication at an additional charge of 1½c. per 100 lbs.

Held, (Clements, C.), (a) that the rule as to ladders was unreasonable and should be modified so as to provide for the shipment of one dozen ladders at actual weight with a minimum of 1800 lbs.;

(b) that the mere fact that there had been a series of unlawful departures from a rule did not unnecessarily prove the rule unreasonable, nor did the granting of a rebate raise a presumption that a lawfully established rate was unreasonable by the amount of the concession;

(c) that "there is no warrant in the law for the maintenance of a rate or rule for the purpose of restricting the movement of a certain class of traffic because it is unattractive to carriers;"

(d) that in view of the change in the tariff allowing stoppage-in-transit, the Commission would dismiss this feature of the complaint without prejudice.

Order accordingly.

816-A.—City of Spokane, Wash. et al. v. Northern P. R. Co. et al. 15 I. C. C. Rep. 376. (Feb. 9, 1909.)

Complaint of unreasonable trans-continental rates from Missouri

River and eastern points to Spokane as compared with rates to Seattle and Pacific Coast points and to Missoula.

Spokane is about 400 miles east of Seattle, and Missoula, Mont., is on the line of the Northern Pacific about 250 miles east of Spokane. Class rates from St. Paul to Seattle and Spokane were generally the same, and less than to Missoula. From Chicago, class rates to Spokane were higher than to Seattle, but somewhat lower to Missoula than to either Spokane or Seattle. There were no joint through rates from Chicago to Missoula, the rates being made by a combination on St. Paul. From New York, the class rates were the same to Seattle as to Chicago and St. Paul, but were materially higher both to Spokane and to Missoula. The through rate from New York to Spokane was made by combination on Chicago, while the Missoula rate was made by combining the rate from New York to Chicago, from Chicago to St. Paul and from St. Paul to Missoula. The rates from New York to the Pacific Coast were controlled by strong water competition and those from interior points by market competition. This condition also operated to give to Pacific Coast points many privileges as to minimum carloads or as to mixing carloads which were not accorded to interior points. It appeared that Spokane was more favored in rates and facilities than any interior jobbing point. In the report, the Commission went at length into the cost of reproduction, the cost of original construction, the capitalization, and the earnings of the Great Northern and Northern Pacific Railroads and also outlined transactions by which the Northern Pacific had acquired coal lands and ore properties under which watered and partly watered stock had been issued by both companies. It appeared that during the past ten years both companies had earned enormous surpluses, that their rights of way had increased tremendously in value and that each was earning at least from 10 to 15% on its capital stock.

Held, (Prouty, C.), (a) that the Hepburn Amendment, conferring enlarged powers on the Commission, did not in any respect change the third and fourth sections of the Act;

(b) that by reason of the competition at the Pacific Coast points, less rates to such points than to Spokane were proper;

(c) that the same competition justified the allowance of privileges at Pacific Coast points not accorded interior localities;

(d) that from all the evidence, it was apparent that both the defendant companies had been earning unreasonable returns;

(e) that both class and commodity rates to Spokane should be reduced to figures indicated.

Order accordingly.

The Union Pacific lines subsequently filed a petition to have the order issued in the above modified on the ground that it was unreasonable to require them to establish the same rates from St. Paul and Chicago to Spokane as was required of the Northern Pacific and Great

Northern, in so much as the distance by the Union Pacific lines was considerably greater. It appeared, however, that to relieve the Union Pacific from the effect of the order would give rise to difficult rate situations with regard to intermediate points.

Held, (Prouty, C.), that the effective date of the order (June 1st) should be postponed temporarily on condition that prior to May 20th, some comprehensive plan be presented to the Commission for the establishment of rates to territory between Pendleton and Spokane, with leave to the interested communities to file supplementary petitions unless satisfactory rates were established. 16 I. C. C. Rep. 179. May 3, 1909.

816-B.—City of Spokane, Wash., et al. v. Northern Pacific Ry. Co. et al. 19 I. C. C. Rep. 162. (June 7, 1910.)

Complaint of unreasonable class and commodity rates from eastern points to Spokane.

The City of Pendleton, Oreg.; the Chambers of Commerce of Baker City, Oreg., and La Grande, Oreg.; the Commercial Club of Walla Walla, Wash., and the Merchants' Association of New York intervened. In accordance with the suggestion of the Commission in the former case, the Great Northern and Northern Pacific had presented an elaborate rate scheme for the approval of the Commission. Four questions were presented in the present case:

- "1. Shall the scheme of rates proposed by the Great Northern and the Northern Pacific be approved by the Commission?
- "2. If not, what rates shall be established to Spokane from St. Paul and Chicago?
- "3. Shall rates be established from territory east of Chicago?
- "4. Shall the Spokane rates be extended to other points in that vicinity; and if not, what rates shall be established to the localities which have intervened?"

The scheme presented by the Great Northern and Northern Pacific was briefly as follows: Rates to Spokane from the eastern territory were constructed by taking 75 per cent. of the present rate to the Pacific and adding thereto a rate 16 2-3 per cent. less than the local rate back to Spokane. A rate thus created was applied from Chicago, the same rate being established from the Mississippi River with a 10 per cent. decrease from the Missouri River. Complainants opposed the scheme,—1st, on the ground that the rates proposed were not as favorable to Spokane jobbers as the old ones; and 2d, that the scheme presented no substantial reduction from the present rates. The scheme, however, did not apply from New York, but only from Chicago and did not cover rates to points east of Spokane. The Commission investigated the cost of operation of the carriers with a view to determining whether their revenues would bear the reduction in the rates.

Held, (Prouty, C.), (a) that the scheme presented by the defendants was not sufficiently comprehensive to cover the ground

which the Commission had in mind and could not, therefore, be approved;

(b) that in investigating the financial status of the carriers, the purpose of the Commission was to ascertain not whether rates *should* be reduced, but whether they *could* be reduced;

(c) that rates should be established to Spokane and be extended to other points as set out in an elaborate schedule annexed to the opinion;

(d) that for the purpose of having an actual test, the Commission would not make any final order until October, during which time the carriers should collect statistics showing the result of the establishment of the rates upon their revenues.

Order accordingly.

817.—United States v. Illinois Terminal R. Co. 168 Fed. 546.
D. C. S. D. III. (Feb. 23, 1909.)

Opinion imposing sentence, after conviction, under plea of guilty, to indictment for transporting glass bottles in interstate commerce without having first filed with the Commission rates applicable thereto.

The defendant was a small line 16 miles in length situated wholly in the State of Illinois, but the six counts of the indictment each specified a transportation by it of freight which had moved from a point in another state.

Held, (Humphrey, D. J.), (a) that prior to the Hepburn Amendment, although the Act made failure to file rates an offense, it was not illegal to transport commodities without first filing such rates;

(b) that under the present law, transportation without first filing rates was an important and serious offense;

(c) that the law requiring publication of interstate rates applied with equal force to all carriers engaged in interstate transportation, whether they operated trains from one state to another, or operated entirely within the boundaries of a single state as part of an interstate movement of freight;

(d) that as the failure to file the rates in question did not appear to be part of a scheme to discriminate, the penalty would not be made too severe, but that the importance of the observance of the law forbade that it should be nominal.

Penalty imposed to the amount of \$12,000.

818.—Jones Lumber Co. v. Chicago & Nw. R. Co. 15 I. C. C. Rep. 427. (March 1, 1909.)

Complaint of unreasonable grouping of Wabeno, Wis., in reference to rates on lumber to points on defendant's line in Illinois and Iowa.

Complainant operated a saw mill at Wabeno. The Wisconsin lumber district was divided into two groups—the Wausau group and the Rhinelander group. Rates from the Rhinelander group were $\frac{1}{2}c.$ to

1c. per 100 lbs. higher than those from the Wausau group, which adjoined the Rhinelander group on the southwest. Wabeno was in the apex of the angles forming the southerly extension of the Rhinelander group and was only a short distance from the boundary line with the Wausau group.

Held, (Lane, C.), that by reason of its geographical location and its rail distance from Chicago and other points on the defendant's lines in Illinois and Iowa, Wabeno was entitled to the carload lumber rates to the points in question accorded by the defendant to points in the Wausau group.

Order accordingly.

819.—Carstens Packing Co. v. Oregon Short Line R. Co. et al.
15 I. C. C. Rep. 429. (March 1, 1909.)

Complaint of unreasonable charge on shipments of cattle from Nampa, Idaho, and from Ontario, Ore., to Tacoma, Wash., and demand for reparation.

Defendant's tariffs provided for trainload rates on 10 cars from Ontario, Ore., to Tacoma, Wash. Complainant instructed his agent to ship six cars at the local rate from Nampa to Ontario, and there combine them with six cars originating at Ontario, so as to secure the benefit of the trainload rate from Ontario to Tacoma. The agent, however, after consultation with defendant's agent, concluded that it was less costly to ship the first six cars through on the combination rate on Ontario and so did not secure the trainload rate.

Held, (Lane, C.), that the question as to whether complainant had the right to consolidate shipments at one point to take advantage of a trainload rate should not be decided, since the complainant's loss was due to the mistake of his own agent.

Complaint dismissed.

820.—Carstens Packing Co. v. Northern Pacific R. Co. et al. 14
I. C. C. Rep. 577, (Nov. 4, 1908); 15 I. C. C. Rep. 431. (March 1, 1909.)

Complaint of unreasonable charge on cattle from Anaconda, Mont., to Tacoma, Wash., and demand for reparation.

These two cases involved the same question, the first covering the shipment of 20 carloads of cattle and the second a shipment of two carloads. At the time the shipments were made, the tariffs provided a rate of \$110 per car of 36½ feet in length, with a provision that for every additional foot in length, 3½% should be added to the rate. No reduction was made, however, when the cars were shorter than 36½ feet. The cars furnished complainant were 34 feet in length. Since the filing of the complaint carriers inserted a rule that a like reduction of 3½% per foot should be made for every foot under 36½ feet.

Held, (Lane, C.), that the tariffs prior to the amendment pro-

vided an unreasonable rule and that reparation should be awarded on the shipments in question on the basis of the tariffs as amended.

821.—Carstens Packing Co. v. Butte, Anaconda & Pacific R. Co. et al. 15 I. C. C. Rep. 432. (March 1, 1909.)

Complaint of overcharge, above tariff rates, on cattle from Anaconda, Mont., to Tacoma, Wash., and demand for reparation.

The Butte, Anaconda & Pacific Railway Company operated freight trains from Anaconda to Stewart only on Tuesdays and Fridays. At Stewart it connected with the Northern Pacific. The shipments in question were made on Saturdays. In order to render the special service in moving the cars on this day, the Butte, A. & P. R. Co. had entered into a special contract with complainant for \$10 per car for such movement and had hauled two cars in accordance with this arrangement, which was not set out in the published tariffs.

Held, (Lane, C.), (a) that the Act provided that the carriers must publish and file their rates and it was unlawful for the carrier to charge and collect any other rates than those published;

(b) that the Butte, A. & P. R. Co. having charged more than the published rate, the complainant was entitled to reparation in the amount equal to the difference between what was actually charged and what should have been charged under the published tariff.

Order accordingly.

822.—National Lumber Co. v. San Pedro, L. A. & S. L. R. Co. 15 I. C. C. Rep. 434. (March 1, 1909.)

Complaint of refusal by defendants to allow complainants a "yarding-in-transit" privilege on lumber at Los Angeles, and demand for reparation.

Prior to August 28, 1906, defendant had allowed shippers of lumber from San Pedro to Los Angeles, destined to other points, a yarding-in-transit privilege at Los Angeles. This privilege was not covered by the published tariffs. When the Hepburn Act went into effect on August 28, 1906, the defendant withdrew the privilege, but made it effective again by published tariffs on January 1, 1907. In this proceeding, reparation was demanded for refusal to allow the privilege between August 28, 1906, and January 1, 1907.

Held, (Lane, C.), (a) that the yarding-in-transit privilege allowed prior to the Hepburn Act was illegally given since not published in the tariffs;

(b) that the refusal to allow the same during the period in question could not be made the basis of an award of damages.

Complaint dismissed.

823.—Holley Matthews Manufacturing Co. v. Yazoo & M. V. R. Co. et al. 15 I. C. C. Rep. 436. (March 1, 1909.)

Complaint of unreasonable rates on cottonwood box shooks from

Greenville, Miss., to Cedar Rapids, Iowa, and demand for reparation.

At the time of the shipments in question, the published through rate was 27c. per 100 lbs. At this time, however, there was in effect a rate on cottonwood box shooks of 10c. from Greenville to Cairo, and a general lumber rate, including box shooks, of 14c. from Cairo to Cedar Rapids, producing a combination of 24c. per 100 lbs. The lumber rate from Greenville to Cairo, however, was 13c. and the tariffs named a through rate of 27c. on lumber, but omitted to specify the lower rate on cottonwood. The defendants conceded that the through rates should not have exceeded the combination of the locals and agreed that reparation should be awarded, but would not consent to an order establishing the 24c. rate for the future. It appeared that cottonwood, although formerly of little value, had recently become a marketable commodity, and there appeared to be no substantial reason why box shooks should be charged a lower rate than lumber.

Held, (Prouty, C.), (a) that "this Commission cannot undertake by its orders to ratify the agreement of parties as to past or future rates. Before it makes an order for reparation or establishes a rate for the future, it must have some opinion of its own upon the reasonableness of the rate involved;"

(b) that in the present case, reparation should be awarded to the amount of 3c. per 100 lbs. on shipments in question;

(c) that as it did not clearly appear that the 27c. rate was unreasonable, no order would be made for the future.

824.—**Percy Kent Co. et al. v. New York C. & H. R. R. Co. et al.** 15 I. C. C. Rep. 439. (March 1, 1909.)

Complaint of unreasonable inland import rate on burlap bags from New York to Chicago and of preference of seaboard burlap bag manufacturers by a lower rate on burlaps.

The inland rate on burlap bags from New York to Chicago was 35c. C. L. and 48c. L. C. L., while the portion of the import rate on burlaps was 18c. Burlaps were somewhat less valuable than burlap bags, and might be loaded somewhat heavier. The low rate on burlaps, however, was controlled by competition by way of Canada, New Orleans, etc.

Held, (Prouty, C.), (a) that the rate on burlap bags did not appear *per se* to be unreasonable;

(b) that although *prima facie* the bag rate should not be almost twice as great as the rate on burlaps, yet in view of the competitive conditions as to the latter, of the fact that the burlap bag rate was not *per se* unreasonable, and of the inability of the Commission to raise the rate on burlap, the complaint would be dismissed.

825.—**West Texas Fuel Co. v. Texas & P. R. Co. et al.** 15 I. C. C. Rep. 443. (March 1, 1909.)

Complaint of unreasonable switching charge on coal at El Paso, Tex., as part of an interstate shipment from Gallup, N. M., and demand for reparation.

The coal in question had been hauled by the Atchison, Topeka & Santa Fe R. Co. from Gallup to El Paso, and there delivered to the Texas & Pacific, on whose tracks the complainant's warehouse was located. The charges prescribed by the Texas Commission for intrastate switching for the distance in question would have been \$1.50. The Santa Fe tariffs provided for switching to and from industries on foreign lines at El Paso "state \$1.50—interstate \$5.00." In the expense bills rendered by the Texas & Pacific, to the complainant, one provided "switching on car coal from Santa Fe interstate \$5.00," while in the other the word "interstate" was omitted and the charge was \$1.50. The defendants contended that the switching service in question was not interstate in character. The Santa Fe and the Texas & Pacific handled the shipments without any instruction at the terminal of the Santa Fe from the shippers' or consignee's agent. Evidence was given as to switching charges of but \$2 to \$3 on other industries at El Paso, and of lower rates on other lines in the vicinity. The coal in question was shipped on July 7, 1906, and delivered to the complainant on July 11, 1906. The complaint was filed July 11, 1908.

Held, (Clark, C.), (a) that the switching service in question was interstate and not intrastate;

(b) that in view of the cost and value of the service, the Texas rates and the switching charges to other points, the charge of \$5.00 was unreasonable and should not have exceeded \$3.00;

(c) that without other information as to the date of the payment of the freight charges, it would be assumed that these were paid on delivery of the shipment;

(d) that since the cause of action accrued more than two years prior to the filing of the complaint, the claim for reparation was barred.

Order accordingly.

826.—Smith & Co. v. Missouri & N. A. R. Co. et al. 15 I. C. C. Rep. 449. (March 2, 1909.)

Complaint of unreasonable rate on eggs from Leslie, Ark., to Chicago, Ill., and demand for reparation.

At the time of the shipment in question, there was no through commodity rate on eggs, these being rated third class at \$1.10 per 100 lbs. Shortly thereafter, a special commodity rate was established of 77½c. Defendants practically agreed that the latter rate was a reasonable one.

Held, (Clements, C.), that reparation should be awarded on the basis of the present rate, which should be maintained for two years.

827.—Darbyshire-Harvie Iron & Machine Co. v. El Paso & S. W. R. Co. 15 I. C. C. Rep. 451. (March 2, 1909.)

Complaint of unreasonable rate on scrap iron from Douglas, Ariz., to El Paso, Tex., and demand for reparation.

Prior to the shipment in question, there had not been sufficient traffic on scrap iron between the points to warrant a special commodity rate and the only rate applicable was the class rate of 63c. per 100 lbs. The defendant conceded that this rate was excessive and that a reasonable rate would be \$3.50 per ton of 2,000 lbs. Complainant demanded a rate of \$2.72 per net ton.

Held, (Clements, C.), that the 63c. rate was unreasonable and that reparation should be awarded on the basis of a \$3.50 per ton rate, which should be maintained for two years.

828.—The Board of Mayor and Aldermen of the City of Bristol, Tenn. v. Virginia & S. W. R. Co. et al. 15 I. C. C. Rep. 453. (March 1, 1909.)

Complaint of unreasonable rate on steam and domestic coal from the Appalachia Coal Fields in Virginia, to Bristol, Tenn.

Bristol was situated on the boundary line between Virginia and Tennessee, rates from the Appalachia field being intrastate when the coal was delivered on one side of the main street and interstate when destined to the other side. The greater part of the coal was for delivery on the Virginia side, leaving only about 14½% interstate. The distance from Appalachia to Bristol was 69½ miles, and the rate was 85c. per ton on both domestic and steam coal. The Southern Railway charged 50c. on steam coal and 70c. on domestic coal from Middlesboro to Knoxville, 69 miles, but this was controlled by competition from other coal mines at rates fixed by the State Commission. In 1907, the rate on both steam and domestic coal from Appalachia to Bristol had been 75c. In March, 1909, the domestic coal rate had been reduced to 60c., and in September increased again to 90c., the rate on steam coal being reduced to 70c. In 1900, the rates had been increased to \$1.05 on steam coal and \$1.25 on domestic coal. In 1904, the domestic rate was reduced to \$1.05. In July, 1905, the steam coal rate was reduced to 80c., leaving the rate on domestic coal \$1.05. In compliance with Conference Ruling 34, Bulletin No. 1, prohibiting a difference in rate based on the use to which a commodity was put, the present rate of 85c. per ton had been established, based on the theory that the shipments of steam coal were four times as great as those on domestic. The opinion reviews the financial transactions under which control of the line over which the shipments in question were made had passed into the hands of the Southern Railway Co. It appeared that although practically no dividends had been paid on the stock of these companies, a large amount of earnings had evidently been put into the property. There had been a rapid growth in the traffic and on certain other hauls of a similar

nature in the vicinity, lower rates were in effect. The line ran through a mountainous country which added something to the cost of operation. Complainant contended that the higher rates now in effect were the result of an unlawful agreement and combination among the defendants.

Held, (Harlan, C.), (a) that "while evidence of such unlawful combinations is always admissible as a part of the history of the rate of which complaint is made, and may often throw light upon the question of its reasonableness, the unlawful combination, standing by itself without proof also of the unreasonableness of the rate, is not a sufficient ground for an order by the Commission reducing the rate;"

(b) that under all the circumstances, the 85c. rate was unreasonable and should not exceed 75c. for the future.

Order accordingly.

829.—Chamber of Commerce of the City of Milwaukee v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 460. (March 2, 1909.)

Complaint of refusal to establish a joint through rate to Milwaukee from points on the Rock Island system formerly on the line of the Burlington, Cedar Rapids & Northern Railway Co., and of preference of Chicago by reason thereof.

The Burlington, C. R. & N. R. Co., at the time of its acquisition by the Rock Island, was an independent system running through the grain producing districts of the northwest. It had no rails of its own into Milwaukee or Chicago, but maintained through routes and joint rates to both of these points in connection with the Chicago, Milwaukee & St. Paul R. Co., and the Chicago & Northwestern. The Rock Island system did not run into Milwaukee and the Cedar Rapids road had been acquired by it particularly to divert to Chicago shipments arriving on the Cedar Rapids line. Shortly after the acquisition of the Cedar Rapids road by the Rock Island, it withdrew the joint through rates to Milwaukee. It appeared that both the Chicago, Milwaukee & St. Paul and the Chicago & Northwestern were willing to make the rates to Milwaukee the same as to Chicago. Practically all the lines running to Milwaukee and Chicago made rates to these points from the territory in question the same, and the Rock Island did so except as to coarse grains, the class and commodity rates being the same and the rates on wheat and barley being the same. The Rock Island proposed, however, to withdraw the low rate on wheat and barley to Milwaukee. The result was that the rate to Milwaukee was 3c. per 100 lbs. higher than to Chicago.

Held, (Harlan, C.), (a) that although it was to the Rock Island's interest to have the entire traffic go over its own rails, it had no right

to choose the Chicago market for shippers and was bound to allow a reasonable rate to Milwaukee;

(b) that tested by the comparison with other rates to Milwaukee and Chicago, the present rate was unreasonable and should not exceed that to Chicago;

(c) that a joint through route and rate should be adopted between the points in question and Milwaukee take a rate not exceeding the Chicago rate, the divisions of the rate being left to the carrier.

Order accordingly.

Prouty, C., delivered a short concurring opinion to the effect that although the carrier's interest must be regarded as well as the shipper's in connection with through rates, in the present case the decision was correct.

830.—Milwaukee Electric Railway & Light Co. v. Chicago M. & St. P. R. Co. 15 I. C. C. Rep. 468. (March 1, 1909.)

Complaint of unreasonable rate on clay conduit from Brazil, Ind., to Racine, Wis., and demand for reparation.

The class rate of 11c. per 100 lbs. was exacted, although there was in effect a commodity rate of 6¾c. to Milwaukee, 20 miles more distant. The defendant admitted that the charge was unreasonable and subsequently established a rate of 6c.

Held, (Harlan, C.), (a) that the rate in question was unreasonable and should not exceed the rate to Milwaukee;

(b) that reparation should be awarded on the basis of a 6¾c. rate.

Order accordingly.

832.—United States v. Baltimore & O. R. Co. 15 I. C. C. Rep. 470. (March 2, 1909.)

Complaint of unreasonable through passenger rate from Pittsburg, Pa., to Newport, R. I., and demand for reparation.

At the date in question, the through rate was \$12.50, while the sum of the locals was but \$11.

Held, (Knapp, Ch.), that the principle that the through rate should not exceed the combination of locals and that where it did so it was *per se* unreasonable applied to passengers as well as to freight, and reparation should be awarded accordingly.

833.—National Petroleum Association et al. v. Louisville & N. R. Co. 15 I. C. C. Rep. 473. (March 2, 1909.)

Complaint of unreasonable rule restricting L. C. L. shipments of coal oil and certain inflammable petroleum products to one day in each week.

The rule in question operated to give a distinct advantage to the Standard Oil Co., which had tank stations and could therefore dis-

tribute its product on short notice. It appeared that practically every other railroad except the defendant allowed shipments of the commodities in question on two or more days.

Held, (Knapp, Ch.), that the rule in question was unreasonable and should be modified so as to permit shipments on at least two days in each week, which days should be separated by at least two intervening days.

834.—American Refractories Co. v. Elgin, J. & E. R. Co. et al. 15 I. C. C. Rep. 480. (March 1, 1909.)

Complaint of unreasonable rate on fire brick from Joliet, Ill., to Milwaukee, Wis., and demand for reparation.

The rate in question was 5c. per 100 lbs. It appeared that a 4c. rate was in effect by other routes and that even lower rates were in force in this section on similar traffic.

Held, (Prouty, C.), that 4c. was a reasonable rate for the future and reparation would be awarded on that basis with interest at 6% from the date of payment.

Order accordingly.

835.—Carstens Packing Co. v. Oregon R. & N. Co. et al. 15 I. C. C. Rep. 482. (March 1, 1909.)

Demand for reparation against initial carrier for excessive charges on cattle from Ontario, Ore., and Nampa, Ida., to Tacoma, Wash., on account of misrouting.

The shipments in question were specifically routed by the shipper through Wallula, where the Oregon R. & N. Co., the initial carrier, maintained a junction with the Northern Pacific Railway. Because of washouts that had occurred on the Oregon R. & N. line, the shipments were diverted through Portland, and there turned over to the Northern Pacific. This diversion, effected without the knowledge or consent of the shipper, was unnecessary, for the line of the Oregon R. & N. Co., as was subsequently ascertained, had been reopened and was then in operation. By reason of the diversion, an additional charge of \$503.20 was exacted. The Oregon R. & N. Co. asked permission to refund the sum of \$461.80 on account of misrouting.

Held, (Harlan, C.), that the proper tariff rate over the route by which the shipments should have gone exceeded the rate charged by \$440.74 and this amount, with 6% from the date of payment, should be awarded.

Order accordingly.

836.—Cambria Steel Co. v. Baltimore & O. R. Co. 15 I. C. C. Rep. 484. (March 8, 1909.)

Demand for reparation on account of alleged unreasonable demurrage charges on private cars, accrued prior to the Conference Ruling of April 13, 1908, and paid under protest after that decision.

The cars in question were private cars belonging to the complainant and the demurrage had accrued while they were standing on complainant's private tracks at Johnstown, Pa.

Held, (Clark, C.), that since the demurrage was properly assessable according to the tariffs in force at the time it accrued, and properly payable at that time, the mere fact that the charges were paid under protest called forth by the decision *In re Demurrage Charges on Privately Owned Tank Cars* (622) gave no basis for a claim for reparation, since by the Commission's ruling this decision was not to be given a retroactive effect, and since to award reparation would produce discrimination as against other shippers who had promptly paid demurrage charges like those in question.

Complaint dismissed.

837.—Bristol Board of Mayor & Aldermen v. Southern Ry. Co.
15 I. C. C. Rep. 487. (March 8, 1909.)

Complaint of preference of Chattanooga, Tenn., over Bristol, Tenn., in bituminous coal rates from Middlesboro, Ky.

The rate to Bristol was \$1.20 per ton, while that to Chattanooga, the same distance, but not over the same line, was 80c. It appeared, however, that the Chattanooga rate was the result of market competition from nearer coal mines, and it was not alleged that the Bristol rate was *per se* unreasonable.

Held, (Harlan, C.), that in view of the dissimilarity of the circumstances and conditions, the preference in rates was not shown to be unreasonable.

Complaint dismissed.

838.—Kansas City Transportation Bureau of the Commercial Club et al. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 491. (March 8, 1909.)

Complaint of discrimination against Kansas City market by lower through rates from Kansas grain fields for export direct to Gulf ports than combination export rates on Kansas City.

This complaint grew out of the adjustment of rates made in pursuance of the Commission's order in *Kansas Farmers, etc. Club v. Atchison, Topeka & Santa Fe* (519) in which the Commission had prescribed rates from Kansas points of origin to Gulf ports for export and to Texas milling and consuming points, lower than the combination rates to such points through Kansas City. It appeared that the carriers originating the grain were anxious to maintain the rates so prescribed inasmuch as it insured them a through haul over their own rails to the Gulf ports while if grain went through Kansas City, it might be delivered, after transshipment, to another carrier for the remainder of the haul. The distance by the direct line was somewhat less.

Held, (Clark, C.), (a) that originating carriers had right to haul

the commodities via routes most advantageous to them, provided they gave to shippers proper service and reasonable rates;

(b) that the Commission had no authority to advance the rates via Kansas City;

(c) that to reduce rates either in or out of Kansas City would involve an adjustment of the entire rate situation in the region, which, under the circumstances it did not seem necessary to make;

(d) that the discrimination in question did not appear to be unreasonable or unjust.

Complaint dismissed.

839.—Rosenbaum Grain Co. v. Missouri, K. & T. Ry. Co. et al.
15 I. C. C. Rep. 499. (March 8, 1909.)

Complaint of unreasonable charge on wheat from Kansas City, Kas., to Galveston, Tex., for export, and demand for reparation.

The complainants had shipped two cars of grain—one in a car of marked capacity 50,000 lbs., and another in one of marked capacity 60,000 lbs. In the first he had loaded 55,000 lbs. of wheat, and in the second 66,000 lbs. 55,000 lbs. was the maximum capacity of the first car. The defendants tariffs provided for a 60,000 pound minimum on grain no matter in what size cars it was shipped. The alleged purpose of this rule was to prevent cars of light capacity being forced on defendants for transportation use.

Held, (Cockrell, C.), (a) that a tariff provision prescribing a minimum weight greater than the possible capacity of the car was unreasonable and in the present case resulted in a charge for transporting 5,000 lbs. more wheat than was actually carried;

(b) that reparation would be awarded based on the rate exacted on 5,000 lbs.

Order accordingly.

840.—Harlow Lumber Co. v. Atlantic Coast Line R. Co. et al.
15 I. C. C. Rep. 501. (March 8, 1909.)

Demand for reparation for charging unreasonable through rate on lumber from Warsaw, N. C., to Chappaqua, N. Y.

The basis of the complaint was the fact that the through rate of 32c. per 100 lbs. via New York exceeded the combination rate of 21c. to New York and 7c. from New York. It appeared, however, that this combination 28c. rate was not available to the complainant because the combined locals did not include full lighterage, so that the complainant in using the local rates would necessarily have been put to an extra expense of 4c. or upwards. It appeared that since the shipment in question the through rate had been reduced to 27c.

Held, (Knapp, Ch.), (a) that the facts did not disclose a typical case of a through rate in excess of combined locals such as have been condemned in general terms by the Commission;

(b) that the carriers had sustained the burden upon them of justifying the rates in question;

(c) that the voluntary reduction of the rate without proof of its unreasonableness prior to the reduction did not furnish a proper basis for reparation.

Complaint dismissed.

841.—Indianapolis Freight Bureau v. Cleveland, C. C. & St. L. Ry. Co et al. 15 I. C. C. Rep. 504. (March 2, 1909.)

Complaint of unreasonable class rates and classification from Indianapolis to Ohio River points and Chicago as compared with rates between Chicago and the Ohio River, and of preference of Chicago over Indianapolis in the allowance of privileges to Chicago shippers not allowed to those shipping from Indianapolis.

The distance from Indianapolis to Ohio River points was 40%, and from Indianapolis to Chicago 60% of the average distance between Chicago and the Ohio River points. The relation of rates from Indianapolis to Chicago was not constructed on any fixed percentage of the rates from Chicago to the Ohio. The complainant sought to have the Indianapolis rate to the Ohio River 50% of that from Chicago and the rate to Chicago 70% of the through rate from Chicago to the Ohio, in each case adding 10% to the relative mileage. At present, the rates from Indianapolis were considerably higher than this. It appeared that the rates from Indianapolis could not be altered without reconstructing the whole system of rates applied to Central Freight Association territory and a disturbance of all rate conditions between Chicago and Cincinnati. Complaint was also made of proportional rates from Indianapolis to the Ohio River crossings on traffic destined to southern points. There was no uniform percentage between local and proportional rates, the latter being constructed under stress of competitive conditions. The proportional rates from Indianapolis were considerably lower than those from Chicago, but were not as much lower as they would have been had they been constructed on a mileage basis with reference to Chicago. An alteration of these rates would have altered the entire rate condition from Indianapolis. Rates on fresh meats were complained of, but this was adjusted satisfactorily while the complaint was pending. Complaint was also made of commodity rates on certain articles to St. Louis in comparison with the Chicago rate. The complaint as regards rates from Indianapolis to Chicago was satisfied by a reduction in July, 1907. From Chicago there was in effect a rule known as the "two-for-one rule" under which when a car of the size required could not be furnished by the railroad, the shipment would be allowed in two cars at the highest minimum weight and lowest rate provided for one car, even though the second car was not filled. This provision was also allowed from Indianapolis on certain articles, but was denied to furniture, vehicles, chairs and other light and

bulky articles. Defendants contended that it was unreasonable to require them to apply it to such articles since in case of articles of which a small amount could be loaded in a car it would not allow them to earn sufficient to pay for the business. As regards many shipments from Chicago, there was an excess of empty cars which made the application of the rule reasonable. Under the "two-for-one rule" a dishonest shipper had the advantage, since he could ask for a large car where he knew the defendant could not furnish it and thus get the advantage of the carload rate for less than carload shipments. Complaint was also made of the classification of japanned castings with hardware in the fourth class C. L. and third class L. C. L., instead of in the fifth class with regular castings. Japanning enhanced the value only one-fifth of a cent per pound.

Held, (Clements, C.), (a) that in view of the great disturbance in rates involved in an adjustment of the class rates from Indianapolis and from Chicago and in view of the fact that the rates either absolutely or relatively did not appear to be excessive or unreasonable or to furnish the carriers an undue return, these rates would not be altered;

(b) that proportional rates to or from a more distant point should normally be less per ton per mile than to or from a less distant point, and the Commission would not condemn a relation of proportional rates from Indianapolis and Chicago although competitive conditions had made the latter somewhat lower relatively than the Indianapolis rates;

(c) that the commodity rates from Indianapolis to St. Louis on iron and steel articles, burlap and gunny bags, furniture and chairs, iron beds and wooden ladders were unreasonable as compared with rates from Chicago, and should be relatively reduced by amounts specified;

(d) that the Commission would be loath to require the enforcement of a rule giving the dishonest shipper an advantage over an honest one and although its application at present appeared to give Chicago an undue advantage over Indianapolis, this feature of the complaint would be retained in order to give the carriers an opportunity to remove the cause of complaint;

(e) that japanned castings should be rated fifth class, the increased rate through the changed classification being unreasonable;

(f) (semble) that it is not proper for carriers to regulate the amount of freight charges by prescribing carload minimums which manifestly could not be loaded;

(g) (semble) that a lower rate was proper on a specific commodity in which the annual amount of shipment was very large.

Order accordingly.

842.—*Hartman Furniture & Carpet Co. v. Wisconsin Central Ry. Co. et al.* 15 I. C. C. Rep. 530. (March 8, 1909.)

Complaint of unreasonable rate on stoves from Minneapolis, Minn., via Chicago, to Fremont, Ohio.

The shipment in question was made in October, 1906. The formal complaint was not filed until November, 1908, but was informally presented in February, 1908. The through rate charged was 33c. There was, however, in the tariff a proviso requiring agents to observe the sum of the locals where this was less than the through rate. A through rate of 28c. was established in 1907. The rule with reference to the observance of local rates had been condemned by the Commission, making the through class rate the only legal rate.

Held, (Harlan, C.), (a) that the informal complaint stopped the running of the Statute;

(b) that under the facts, the rate charged was unreasonable and should not have exceeded 29½c., and that reparation should be awarded accordingly.

843.—Pleasant Hill Lumber Co. v. St. Louis S. W. Ry. Co. et al.
15 I. C. C. Rep. 532. (March 2, 1909.)

Demand for reparation on account of unreasonable charge on saw mill machinery from Ogemaw, Ark., to Sodus, La.

The shipments in question were made in May, 1905, and the charges collected in June, 1905. The complaint was not filed until September, 1907. The complainant failed to appear at the hearing. The defendant filed an affidavit as to the date of the payment of the freight.

Held, (Clements, C.), that the claim for reparation was barred.
Complaint dismissed.

844.—Watika Coal & Lumber Co. v. Atchison, T. & S. F. Ry. Co. et al.
15 I. C. C. Rep. 533. (March 8, 1909.)

Demand for reparation on account of alleged misrouting of lumber from Ashland, Tex., to Watika, Okla.

Complainant did not appear at the hearing.

Held, (Lane, C.), that the case would be dismissed for lack of prosecution.

845.—Monroe Progressive League v. St. Louis, I. M. & S. Ry. Co. et al.
15 I. C. C. Rep. 534. (March 8, 1909.)

Complaint of discrimination against Monroe, La., in rates from St. Louis and points north, northeast and northwest thereof to southern points and of rate adjustment by which Monroe was grouped with Alexandria and Shreveport in rates from the north.

The defendant justified most of the rates on the ground of railroad and commercial competition at New Orleans, Vicksburg, etc. It appeared, however, that in certain cases the rates from St. Louis to Monroe were higher than the through rates to Vicksburg, plus the local back to Monroe. The competition by water from St. Louis to

Vicksburg was not at present active but would arise if the rates to Vicksburg were at all lower. Rates from Memphis were also complained of, but these were adjusted while the case was pending. Shreveport and Alexandria were still more distant than Monroe from the points of origin, but they were all situated in the same general territory.

Held, (Clark, C.), (a) that where the combination rate on Vicksburg exceeded the through rate to Monroe, it was to that extent unreasonable;

(b) that although distance is to be regarded in determining the reasonableness of rates, it could not alone control;

(c) that potential water competition was sufficient excuse for a preference between localities;

(d) that it did not appear to be unreasonable to group Monroe with Shreveport and Alexandria.

Case held open for further proceedings.

846.—Place v. Toledo, Peoria & Western Ry. Co. et al. 15 I. C. C. Rep. 543. (March 8, 1909.)

Complaint of refusal to rate fuel wood as emigrants' movables where shipped as part of the baggage and effects of an intending settler.

In September, 1908, complainant shipped a carload of goods from La Harpe, Ill., to himself at Boulder, Col., and prepaid the freight at the rate provided in the tariff for emigrants' movables, which covered "property included in the outfit of intending settlers." In the lot there was 5165 pounds of fuel wood which was plainly piled in the middle of the car and was not intended for sale or speculation. The tariff provision was not clear as to whether this fuel wood came under it or not. The agent at the point of destination collected an extra charge on the wood, refusing to include it at the emigrant movable rate.

Held, (Clark, C.), (a) that the underlying reason for the transportation of emigrant movables was to offer an inducement to persons to settle in undeveloped localities;

(b) that fuel wood was included in the property in the outfit of an intending settler;

(c) that the charge assessed on the wood was in excess of the legal tariff and was unreasonable.

Order for refund accordingly.

847.—Cedar Hill Coal & Coke Co. v. Colorado & Southern Ry. Co. et al. 15 I. C. C. Rep. 546. (March 8, 1909.)

Complaint of unreasonable reconsignment charge on coal and demand for reparation.

The shipment complained of included six cars. At the time the first three cars were shipped, defendants had in effect a rule permit-

ting a change of destination without extra charge where the notice was given the railroad before the car arrived at the destination. At the time the last three cars were shipped there was in effect a rule providing for a change of destination en route within 24 hours after arrival, at \$5 per car. There was evidence to the effect that change of route involved considerable expense to the carrier for telegraphing, but by reason of the wholesale arrangement for telegraphic messages by the defendant, the exact cost was difficult to ascertain. The complainant was charged \$5 each on all six cars. The \$5 rate in effect when the last three shipments were made had been continued only a year and had then been reduced to \$2.

Held, (Clark, C.), (a) that the reduction of the charge was presumptive but not conclusive evidence of its prior unreasonableness;

(b) that "the reasonableness of a reconsignment charge is dependent upon the cost of that service" and there was no satisfactory evidence as to the cost in this case;

(c) that from the evidence the \$5 charge was unreasonable, in so far as it exceeded \$2;

(d) that reparation should be awarded for the \$5 overcharge on each of the first three cars and at the rate of \$3 on the last three.

848.—Channon Co. v. Lake Shore & M. S. Ry. Co. et al. 15 I. C. C. Rep. 551. (March 8, 1909.)

Complaint of unreasonable rate and classification on old canvas from Worcester, Mass., to Chicago, Ill., and demand for reparation.

The canvas in question was so worn as to be useless as canvas and was bought and sold as junk. The defendant, however, refused to apply the junk rate of 35c., which under the tariff included only old rope and cordage, and applied the canvas rate of 75c.

Held, (Prouty, C.), (a) that the canvas in question was really junk and the classification should be modified so as to include it;

(b) that reparation should be awarded on the basis of the junk rate as to the shipments in question.

849-A.—Kindel v. New York, N. H. & H. R. Co. et al. 15 I. C. C. Rep. 555. (March 2, 1909.)

Complaint of preference of Chicago, Kansas City and eastern points over Denver in the adjustment of class rates from the east to Kansas City, Denver and points in Utah.

The complaint was based on the fact that class rates from the east to points west of the Missouri River were based on rates to the Missouri River plus the local rate from the Missouri River, while rates through Denver were not so adjusted. The result was that shippers at Kansas City had a great advantage over Denver shippers in serving points west of Denver. The complainants asked that Colorado common points be made basing points in the same way that

the Missouri River was a basing line. Complaint was also made of the unreasonableness of class rates from the Missouri River to Denver and from Denver to Utah common points. The original complaint did not allege unreasonableness of any specific rates from Denver to Utah points and evidently desired to raise the general question of the rate adjustment at Denver and obtain a general order. At the hearing, complainant amended the complaint by specifying definite class and commodity rates. There was considerable evidence showing the prosperity and large earnings by the Union Pacific, one of the carriers whose rates were complained of.

Held, (Clark, C.), (a) that as regards the matters not alleged in the complaint and brought up for the first time at the hearing, no action would be taken, since "we are authorized to reduce a rate, or to modify a rule or practice which affects a rate, only after full hearing upon complaint, and no order can be entered by the Commission affecting a carrier's rates or regulations except after such carrier has been given full and fair opportunity to be heard;"

(b) that to make Denver a basing point would not assist the general rate situation, since it would place Utah points at the same disadvantage with regard to Denver as Denver was now in with regard to Kansas City and other Missouri River points;

(c) that since the through rate to Denver, based on Missouri River points, was the same as the combination local rates on such points, it was *prima facie* unreasonable and Denver should have through rates from Chicago less than the combined locals on the Missouri River;

(d) that the reasonableness of a rate between two points served by two or more carriers could not be determined by a consideration alone of that line which is shortest and most favorably situated as to operations, earnings, etc., but the entire situation must be considered;

(e) that there appeared a discrimination in class rates against Denver in a number of particulars specified which should be adjusted. Order accordingly.

849-B.—*Chicago, B. & Q. R. Co. et al. v. Interstate Commerce Commission*. 171 Fed. 680. C. C. N. D. Ill. E. D. (Aug. 24, 1909.)

See 697-B.—*Supra*, p. 243.

850.—*Indianapolis Freight Bureau v. Pennsylvania R. Co. et al.* 15 I. C. C. Rep. 567. (March 8, 1909.)

Complaint of preference of St. Louis and Ohio River crossings over Indianapolis in rates on sugar and coffee from New Orleans and from the Atlantic Sea Board points.

Prior to July 15, 1908, rates from New Orleans to Indianapolis were the same as to Chicago and intermediate points. In July and

August, 1908, the defendant increased the carload rate on coffee by 3c. per 100 lbs., and on sugar by 2c. to all points except St. Louis and Ohio River crossings. It appeared that water competition strongly influenced the rate on sugar but did not affect the rate on coffee. It also appeared that sugar was sold in such a way that the shipper was the one who would pay the increased rate and defendants contended that for this reason the Indianapolis merchants were not interested.

Held, (Clark, C.), (a) that the Act particularly provided that no complaint be dismissed because it was shown that the complainant was not damaged and the Commission was concerned with matters of the present kind only from the standpoint of the lawful tariffs; it had no means of knowing how long the present practice of selling sugar would be continued and the point made by the defendants as to the complainant's interest in the proceeding was not sound;

(b) that the increased rate on sugar was justified by water competition, since carriers might voluntarily make, under the force of controlling competition, rates which they might not be required to make;

(c) that the rates on coffee as altered were a departure from the long and well-established relationship of rates between Indianapolis, St. Louis and Ohio River crossings and were unreasonable; the rates in effect prior to August, 1908, should be restored.

Order accordingly.

851.—Thomas v. Chicago, M. & St. P. Ry. Co. et al. 15 I. C. C. Rep. 584. (March 8, 1909.)

Complaint of unreasonable rate on vegetables from Green Bay, Wis., to Pattonsburg, Mo., and demand for reparation.

The rate charged was the combination of local rates on Milwaukee, aggregating 31½c., there being at the time a joint through rate of 22c. over all other lines.

Held, (Harlan, C.), (a) that 22c. was a reasonable rate for the services in question and should be established in the future;

(b) that reparation would be awarded on the basis of the 22c. rate.
Order accordingly.

852.—Gamble-Robinson Commission Co. v. Chicago, N. W. R. Co. 168 Fed. 161. C. C. A. 8th Circ. (March 22, 1909.)

Error to C. C. U. S., Dist. of Minn., sustaining demurrer to complaint of discrimination and preference in unreasonably and maliciously refusing shipments of fruit, vegetables and dairy products to complainants without prepayment of freight charges, although allowing such privileges to other shippers similarly situated.

Prior to December 15, 1906, it had been the uniform custom and usage of carriers, including the defendant, to accept shipments of the products named at local stations without prepayment of freight,

taking a written guarantee from the shipper and relying in the first place on the consignees for payment of the charge with recourse against the shipper in case of any question arising. Where shipments were received by carriers from connecting lines, it was the custom for the terminal carrier to pay the charges of the connecting lines, and collect for the entire transportation from the consignees at destination after delivery of the goods. Plaintiffs did a large commission business, conducted for the most part over defendant's lines. On December 15, 1906, defendant notified its agents that it would no longer accept freight consigned to defendant from shippers or connecting lines unless charges were prepaid. At the same time, however, it continued to receive for and deliver freight to plaintiffs' competitors, similarly situated, without prepayment of transportation charges. The complaint alleged that this course of action was adopted by defendant to harass the complainant, to injure its business, and its credit, and to give its competitors an unequal and unreasonable preference and advantage, and to subject it to an unequal and unreasonable prejudice in the transaction of its business, and that the course of action in fact had that effect. The complainants demanded a judgment of \$50,000 for damages suffered.

Held, (Sanborn, C. J.), (relying on Circuit Court decisions involving complaints of discriminations between connecting lines) (a) that the Act did not forbid all preferences and discriminations, but only such as were undue or unjust;

(b) that neither the common law nor the Interstate Commerce Act required carriers to give credit to their patrons;

(c) that the refusal of this privilege was not an unjust discrimination or an undue preference, although it was allowed to a competitor similarly situated, and the motive or purpose on the part of the defendant was immaterial.

Judgment sustaining demurrer affirmed.

Hook, C. J., dissented on the ground that all kinds of undue preferences and unjust discriminations by carriers against shippers were forbidden; that in the present case an important advantage was denied complainant which was allowed his competitors, without any reason appearing therefor, and that the cases cited by the majority involved discriminations between connecting lines, and hence were not conclusive in the present case.

854.—Bainbridge Board of Trade v. Louisville, Henderson & St. L. Ry. Co. et al. 15 I. C. C. Rep. 586. (April 5, 1909.)

Complaint of unreasonable rates from St. Louis, Mo., to Bainbridge, Ga., in comparison with rates to Eufaula, Ala., and to Albany, Ga.

The real basis of the complaint was a preference of Eufaula. It was not proved, however, that Bainbridge jobbers could not compete favorably with those at Eufaula at intermediate points. The

evidence showed that the water competition at Eufaula was substantially different from that at Bainbridge.

Held, (Clark, C.), (a) that the evidence did not show the inherent unreasonableness of the rates to Bainbridge;

(b) that carriers could not be compelled as a matter of law to meet water competition;

(c) that the preference of Eufaula resulting in the all-rail adjustment there and in the relation of the water rates at the two points was not unjust or undue, since it did not result from the voluntary act of the carriers at either point.

Complaint dismissed.

855.—*Nollenberger v. Missouri Pacific Ry. Co. et al.* 15 I. C. C. Rep. 595. (April 5, 1909.)

Complaint of unreasonable rate on beer from St. Louis, Mo., to Leadville, Col., and demand for reparation.

The shipments in question were made between June 27, 1906, and November 27, 1907, and billed, some at 90c. and some at 92c. per 100 lbs. Complainants contended that all charges in excess of 70c. per 100 lbs. were unreasonable, and also that this rate should be applied as to future shipments. Defendants denied that they operated under a common control, management or arrangement to Leadville or beyond Pueblo. It appeared, however, that the property was transported from St. Louis to Leadville in the same car and that the delivering carrier collected the full freight. Defendants claimed that shipments prior to July 9th, 1906, were barred by the Statute. No formal protest had been made on the payment of the rates in question, but complainant had frequently protested informally. Complainants claimed \$1500 damages. The complaint was filed July 25th, 1908. Toward the close of the case, complainant had sought to amend his petition so as to include a request for the establishment of a joint rate.

Held, (Clark, C.), (a) that it was not necessary to a recovery of reparation before the Commission that the rates be paid under protest, and that lack of protest did not preclude the complainant from relief unless the defendants' failure to object was under such circumstances and for so long a period as to amount to an acquiescence in the rate and to a breach of good faith in subsequently denying its reasonableness;

(b) that defendants were acting under such an arrangement as to bring the transportation within the scope of the Act;

(c) that under the decision in *Baer Brothers v. Missouri Pacific R. Co.* (617) the rate in question was unreasonable;

(d) that the cause of action in the present case accrued on the dates when the freight charges were paid;

(e) that under the limitation provision, all claims, whether arising prior or subsequent to August 28th, 1906, were entitled to two

years for presentation to the Commission, the one-year proviso applying only to claims accruing more than two years prior to that date;

(f) that shipments on which payments were made prior to July 28th, 1906, were barred, but those subsequent thereto were not;

(g) that the Commission was not bound by the amount of damages claimed in the petition and would effect substantial justice in the matters under its control in spite of defective pleadings;

(h) that reparation should be awarded to the amount of \$2327.51 with interest;

(i) that the Commission would not undertake in this proceeding to fix the locals which together make up a charge for future through movement and that if the defendants did not reduce their charges in accordance with this report, or if suitable through facilities were denied, the complainant might file his petition asking for the establishment of a joint through route and rate.

Order accordingly.

856.—Advance Thresher Co. v. Orange & Northwestern R. Co.
et al. 15 I. C. C. Rep. 599. (April 5, 1909.)

Complaint of unreasonable rate on agricultural machinery from Bancroft, Tex., to Crowley, La., and demand for reparation.

The complainants did not appear at the hearing but subsequently submitted the case on an agreed statement of facts. The basis of the complaint was that the rate in question exceeded the combined locals, but the combination was made by using Texas state tariffs which were not filed with the Commission. The distance from Bancroft to Orange was 5 miles, and from Orange to Crowley 91 miles. The rate from Orange to Crowley was 25c. The rate from Bancroft to Crowley was 59c. Subsequent to the filing of the complaint, the rate in question was reduced to 35c. per 100 lbs.

Held, (Clark, C.), (a) that where a combination local rate includes a compulsory intrastate rate, the joint through rate, exceeding the combined locals, was not necessarily or *prima facie* unreasonable;

(b) that inasmuch as the Orange to Crowley rate was but 25c. for a distance of 91 miles, a 59c. rate for 96 miles, including the 91-mile haul was *prima facie* unreasonable;

(c) that the subsequently established rate of 35c. was a reasonable one and reparation should be awarded on this basis.

Order accordingly.

857.—Farley & Loetscher Mfg. Co. v. Chicago, M. & St. P. Ry. Co.
15 I. C. C. Rep. 602. (March 8, 1909.)

Complaint of unreasonable rate on doors from Dubuque, Ia., to Sioux Falls, S. Dak., and demand for reparation.

The rate charged was 19c. per 100 lbs., while at the same time a competing line charged but 10c. Since the shipment defendants re-

duced their rate to 10c. and admitted the unreasonableness of the rate exacted, but denied the power of the Commission to grant reparation.

Held, (Clark, C.), (a) that the Commission had power and right to award reparation in a case like the present;

(b) that reparation would be awarded accordingly.

858.—Southern Kansas Millers Commercial Club v. Atchison, T. & S. F. Ry. Co. 15 I. C. C. Rep. 604. (April 5, 1909.)

Complaint of unreasonable rate on wheat from points in Oklahoma to Kansas City, Mo., as compared with rates from Kansas points to Kansas City.

It appeared that a readjustment of intrastate rates by the Legislation of Kansas and the granting of certain transit privileges had given complainant the necessary relief and complainant, therefore, agreed that further prosecution of the case was not desired.

Complaint dismissed.

859.—Southern Kansas Millers Commercial Club v. Chicago, R. I. & P. Ry. Co. et al. 15 I. C. C. Rep. 605. (April 5, 1909.)

Complaint of unreasonable rates on grain and grain products from Kansas points to Memphis, Tenn., and Little Rock, Ark., as compared with rates from Oklahoma points.

The Oklahoma Millers' Association intervened, denying complainant's right to relief. At the date assigned for the hearing, complainant filed its application to dismiss, stating that the rates alleged to be unreasonable had not produced the harmful results which they had anticipated.

Complaint dismissed.

860.—Southern Kansas Millers' Commercial Club v. Atchison, T. & S. F. Ry. Co. et al. 15 I. C. C. Rep. 607. (April 5, 1909.)

Complaint of preference of Oklahoma millers by rates from Kansas to Oklahoma as compared with the intrastate rates within Oklahoma.

The Oklahoma Millers' Association intervened as a defendant. At the date of the hearing complainant moved to dismiss the complaint on the ground that the rates in question did not produce the anticipated injury and that an adjustment of the intrastate rates gave the required relief.

Complaint dismissed.

861.—Maxwell v. Adams Express Co. 15 I. C. C. Rep. 609. (April 5, 1909.)

Complaint of alleged unreasonable rule of defendant assessing double rates on typewriters not properly boxed, and demand for reparation.

In September, 1908, complainant shipped a typewriter, signing an unconditional release. He was charged \$2, the double first class rate. At the time of the hearing defendant was represented, but complainant did not appear.

Held, (Cockrell C.), that the case should be dismissed for want of prosecution.

862.—**Midland Mill & Elevator Co. v. Kansas S. W. Ry. Co. et al.** 15 I. C. C. Rep. 610. (April 5, 1909.)

Complaint of refusal to continue joint through rates on grain and grain products from points on the line of the Kansas Southwestern to all points on the lines of the Midland Valley Ry. Co., Kansas City Southern Ry. Co. and Missouri, Kansas & Texas Ry. Co.

Up to the fall of 1907 defendants had through rates from points on the Kansas Southwestern to points on the lines of all the other defendants via the Midland Valley, but such rates were then cancelled at the request of the Kansas Southwestern. Complainant's mill was located on the line of the Midland Valley and it wished through rates from points on the Kansas Southwestern by way of its mill to points beyond, with milling-in-transit privileges connected therewith. The Kansas Southwestern gave as a reason for cancelling the rates via the Midland Valley that it had in effect through rates to all the points in question by other connections under which it received a long haul. It appeared that in case of the through rates, the Kansas Southwestern had always received its local rate as the division, so that as a practical matter, the refusal by the Kansas Southwestern to join in through rates in no way interfered with the adjustment of the rate situation by the connecting lines by the use of proper milling-in-transit privileges and proportional rates. No producer or shipper on the Kansas Southwestern, and no consumer or purchaser at the points to which through rates were asked, made any complaint against the present charges or regulations. The Kansas Southwestern was a party to through rates to all points on the Midland Valley, including the point where complainant's mill was situated.

Held, (Cockrell, C.), that since the Kansas Southwestern always received its full local it would do the complainant no practical good to have the relief prayed for granted, since whatever milling-in-transit privileges he was entitled to could be obtained by the action of the carriers connecting with the Kansas Southwestern without its concurrence.

Complaint dismissed.

863.—**Isbell-Brown Co. v. Michigan Central R. Co. et al.** 15 I. C. C. Rep. 616. (April 5, 1909.)

Complaint of unreasonable rate in excess of legal tariff rate on beans from Lansing, Mich., to Cedar Rapids, Ia., and demand for reparation.

The rate exacted was 30½c. The legal published tariff rate was 28½c. The complainant did not appear at the hearing.

Held, (Cockrell, C.), (a) that the overcharge could be paid by the defendant without any order of the Commission.

(b) that as no evidence was presented with reference to the reasonableness of the existing rate, the complaint should be dismissed for want of prosecution.

864.—American Cigar Co. v. Chicago, M. & St. P. Ry. Co. et al.
15 I. C. C. Rep. 618. (April 5, 1909.)

Complaint of unreasonable rate on tobacco from Stoughton, Wis., to Passaic, N. J., and demand for reparation.

The complaint was based on the fact that the total rate charged, 52½c. per 100 lbs., was made up of a combination of the proportional interstate rate of 17½c. over the line of the initial carrier, combined with 35c. to the delivering carrier, whereas at the time of the shipment the initial carrier had a local rate of 15c. per 100 lbs. Subsequently, the proportion of the interstate rate was reduced to 15c.

Held, (Cockrell, C.), that the rate charged was unreasonable to the amount of 2½c. and reparation should be awarded accordingly.

865.—Standard Lime & Stone Co. et al. v. Cumberland Valley R. Co. et al. 15 I. C. C. Rep. 620. (April 6, 1909.)

Complaint of discrimination against complainants at Martinsburg, W. Va., in favor of shippers from Bunker Hill, by defendant's refusal to allow complainants equal rates and terms in the shipment of lime-stone and lime allowed shippers from Bunker Hill.

Complainants had stone quarries at Martinsburg, W. Va., a point where the Cumberland Valley, running from Winchester, W. Va., to Harrisburg, Pa., crossed the Baltimore & Ohio. Bunker Hill, W. Va., was located along the line of the Cumberland Valley about ten miles south of Martinsburg and at both points lime-stone and lime were produced and the competition between the two was very strong. Prior to June, 1907, the Cumberland Valley applied the same rates on lime-stone and lime from Bunker Hill and from Martinsburg to northern points. At that time, however, the Cumberland Valley cancelled the rates from Martinsburg. This was done for the express purpose of maintaining and fostering an industry at Bunker Hill similar to that at Martinsburg, and the Cumberland Valley refused to accord the complainants at Martinsburg the same rates and terms allowed at Bunker Hill and refused to accept from the Baltimore & Ohio, at Martinsburg, Baltimore & Ohio cars loaded with complainants' property and placed on the tracks of the Cumberland Valley at Martinsburg.

Held, (Cockrell, C.), (reviewing the decisions by the courts and by the Commission), that the circumstances and conditions at the two points being substantially similar, the defendants were not justified

in refusing the complainants the same rates at Martinsburg as they charged at Bunker Hill, and they would be directed to comply with the law in this respect.

Order accordingly.

866.—Duluth Log Co. v. Minnesota & I. Ry. Co. et al. 15 I. C. C. Rep. 627. (April 6, 1909.)

Complaint of unreasonable charge on poles from La Porte, Minn., to Poplar Bluff, Mo., by reason of misrouting, of defendants' refusal to make an allowance for supporting stakes, and demand for reparation.

The complainant's agent directed the routing of the freight in question via St. Louis, by which route there were several possible combinations of carriers. The defendants' agent did not select the cheapest combination. Complainant asked for reparation on the basis of the lowest possible combination over any route. The tariff under which the shipment moved did not provide for an allowance for the stakes furnished by the complainant, but was subsequently amended by inserting a provision allowing 500 lbs. In case of the shipment in question, stakes were required to hold the poles in place, and these were furnished by complainant. The shipment moved on Aug. 13, 1906. The complaint was filed Dec. 4, 1908, but informally presented to the Commission No. 20, 1907.

Held, (Lane, C.), (a) that defendants properly routed the shipment via the routing specified, but it was also their duty to do so in the cheapest possible manner and by reason of their failure in this respect, complainant was entitled to recover the amount which the charges exacted from it exceeded those over the lowest possible route via St. Louis;

(b) that the refusal to make an allowance for stakes was unreasonable and complainant should also be awarded reparation on the basis of a 500-lb. allowance;

(c) that as the complaint was filed informally within the two years, the Statute of Limitations did not run against it, although formal complaint was filed more than two years after the shipment in question.

Order accordingly.

867.—Phillips v. New York & B. D. Express Co. 15 I. C. C. Rep. 631. (April 5, 1909.)

Complaint of unreasonable express rates from Boston, Mass., to Bristol Ferry, R. I., as compared to rates from Boston to Fall River, Mass., of unreasonable minimum at Bristol Ferry compared with that at Fall River, and of discrimination against Bristol Ferry in refusal to allow free "pick-up and delivery" wagon service at Bristol Ferry, although allowing the same at Fall River.

Defendants divided its express territory from Boston into four

zones. Fall River was in the third zone with a rate of 50c. per 100 lbs. and 15c. per package minimum. Bristol Ferry, seven miles beyond, was in the fourth zone taking a 60c. rate with a 25c. minimum. Fall River, however, was a large and prosperous town which would readily support a free "pick-up and delivery" wagon service, while Bristol Ferry was a small place with but 73 residents. Complainant lived at Bristol Ferry in the summer and at Fall River in the winter. He wished to get the same express rates to his residence at both seasons.

Held, (Harlan, C.), (a) that in view of the difference in circumstances and conditions at the two points, the charges in question were not absolutely or relatively unreasonable;

(b) that free carriage might legally be furnished at a large town which was denied to a smaller one, where competitive conditions were dissimilar.

Complaint dismissed.

870.—Burr et al. Railroad Commissioners of the State of Florida v. Seaboard Air Line Ry et al. 16 I. C. C. Rep. 1. (April 5, 1909.)

Complaint of preference of Alachua, Fla., over Gainesville and Hawthorne, Fla., in rates on sea-island cotton to Savannah, Ga.

Alachua is 15 miles east of Hawthorne, and 18 miles west of Gainesville. The three towns are the center of an extensive cotton producing community. The rate from Alachua to Savannah was 39c. and from Gainesville, 40c. From Hawthorne the rate formerly was 68c. but after the filing of the complaint was reduced to 45c. Over the Seaboard Air Line the distance from all three points was practically the same. The conditions surrounding the haul to the two points were also substantially similar. Over the line of the Atlantic Coast Line, however, the haul from Hawthorne was four miles greater and from Gainesville, 15 miles greater.

Held, (Harlan, C.), (a) that the Seaboard Air Line, the short line road, was not entitled to fix its rates to equidistant points on the basis of the longer haul from Gainesville over the line of another carrier;

(b) that the rate via the Seaboard Air Line from all three points should be the same;

(c) that no findings would be made as to the rates via the Atlantic Coast Line Railroad.

Order accordingly.

871.—Lindsay Bros. v. Baltimore & O. S. W. R. Co. et al. 16 I. C. C. Rep. 6. (April 5, 1909.)

Complaint of unreasonable rate on vehicles from Lawrenceburg, Ind., to Milwaukee, Wis., and demand for reparation.

The rate charged was on the basis of the joint through class rate

of 29c. per 100 lbs. At the time the shipment moved it was alleged there was in effect a combination through rate of 22c., made up of a rate of 17c. to Chicago, and 5c. from Chicago to Milwaukee. The latter rate, however, was applicable only on shipments originating east of the Illinois-Indiana state line. The local class rate then in effect from Chicago to Milwaukee was 8½c. From February, 1907, to June, 1908, the defendants had in effect a 22c. rate on the theory that they were thus aligning the rate to the combination of locals. The present joint through rate was 25½c. and was established in November, 1908, after the filing of this complaint. Defendants sought to justify the situation on the ground of water competition between Chicago and Milwaukee which involved the proportional rate but not the joint through rate.

Held, (Harlan, C.), (a) that the 5c. rate was not a local rate but a proportional one;

(b) that although the Commission insisted on the principle that in the absence of justifying circumstances a through rate in excess of the sum of the locals was unreasonable, the present was not a case for the application of this principle;

(c) that although carriers were privileged to meet water competition they were not obliged to do so;

(d) that the proportional rate in question was not applicable to the present shipment and not a proper measure of its reasonableness;

(e) that the present rate of 25½c. was a reasonable one to have been charged and reparation should be awarded at the rate of 3½c. per 100 lbs. on the shipments in question.

Order accordingly.

872.—Chilton Malting Co., Ltd. v. Chicago, M. & St. P. Ry. Co.
16 I. C. C. Rep. 10. (April 5, 1909.)

Complaint of unreasonable rate on malt from Chilton, Wis., to Kansas City, Mo., and demand for reparation.

Complainants had made a contract based on the existing 10c. rate, which, during the period of shipment, was raised by 3¼c.

Held, (Harlan, C.), that under the facts the increased charge was unreasonable and reparation should be awarded on the basis of the 10c. rate.

873.—Board of Trade of Winston-Salem, N. C., et al. v. Norfolk & W. Ry. Co. 16 I. C. C. Rep. 12. (April 12, 1909.)

Complaint of unreasonable rates on coal from the Pocahontas District in Virginia to Winston-Salem, N. C., and to Durham, N. C., and of preference of points east of Norfolk and Lynchburg, Va., and demand for reparation.

The rate in question was \$2.30 per ton. Winston-Salem was on a branch line, 122 miles south of Roanoke, and Durham on another

branch 117 miles south of Lynchburg. The rate to the two points was the same. The grades and other operating conditions to Winston-Salem and to Durham were more serious than to points on the main line. Both cities were prospering under the existing rates. These rates yielded, however, a high rate per ton-mile, higher than that to other points on defendants' system for the same distance, or on the same traffic for similar distances over other lines, and also more than the average rate on traffic in the region. Defendants sought to justify the rates on the ground that competitive conditions on other parts of the system forced the rates so low that they must be made up by high charges where possible. The Roanoke and Lynchburg rates were \$1.50 but these were highly competitive rates.

Held, (Knapp, Ch.), (a) that "where particular rates on a particular commodity between particular points are challenged the question of net earnings on the particular lines involved is not so important, unless it be shown that the margin of profit is so small on the system's business as a whole that a reduction in the particular rates would reduce the whole income below the reasonable profit point;"

(b) "To divide the system into its constituent elements and to require that each shall show a surplus commensurate with that yielded by the business of the system as a whole in justification of a particular rate on one commodity is not the usual, and it is not believed to be the proper basis upon which to measure the justness of such rate;"

(c) that in view of the difference of circumstances at Winston-Salem and Durham, and at main line points, a lower rate at the latter was not unreasonable;

(d) that in view of the earnings of the defendants and of the circumstances surrounding the traffic, the \$2.30 rate was unreasonable and should not exceed \$2.10 to Winston-Salem and \$2.20 to Durham;

(e) that under the facts and circumstances in the case reparation should be refused.

Order accordingly.

874.—*Avery Mfg. Co. et al. v. Atchison, T. & S. F. Ry. Co. et al.*
16 I. C. C. Rep. 20. (April 12, 1909.)

Complaint of preference of Galva, Canton and Springfield, Ill., over Peoria, Ill., in the relative adjustment of rates on agricultural implements to Missouri River points.

All four points had formerly been in a group known as the Peoria rate group. Galva, Canton and Springfield were respectively 45 miles northwest, 28 miles west and 88 miles south of Peoria. On shipments of raw material from which agricultural implements were made, from the south and east, Peoria took somewhat lower rates than the other three points. It was in order to meet this condition and to put the

first three points on a commercial equality with Peoria that the carriers took Galva, Canton and Springfield out of the group, and gave them the Mississippi River rate, $3\frac{3}{4}$ c. less than the Peoria rate.

Held, (Clements, C.), (a) that a carrier might properly take into account in making rates, amongst other conditions, questions of distance and occasionally natural advantages, and might give equal access to markets to localities of dissimilar distances where such distances involved no material increase in the transportation expense;

(b) that a handicap of high rates on raw materials might be offset by the carriers by lower rates on the products thereof;

(c) that under the facts and circumstances in this case no unlawful prejudice against Peoria was shown.

Complaint dismissed.

875.—Neufeld v. Chicago, M. & St. P. Ry. Co. 16 I. C. C. Rep. 26.
(April 13, 1909.)

Complaint of unreasonable rate on laths from Beecher Lake, Wis., to Chicago, Ill., and of violation of Section 4 in greater charge from Beecher Lake than from Pembine, and demand for reparation.

Beecher Lake was on the defendant's line, 273 miles from Chicago, Pembine being on the same line four miles farther distant. The rate on lumber from Pembine was 10c. per 100 lbs., but the tariff contained no condition making the Pembine rate applicable to intervening points, and defendant exacted a rate based on its distance tariff, equal to $22\frac{1}{2}$ c. per 100 lbs. Defendant admitted the unreasonableness of the rate and prayed to be allowed to make reparation.

Held, (Clark, C.), that the rate exacted was unreasonable and in violation of Section 4 and reparation should be awarded on the basis of the 10c. rate.

Order accordingly.

876.—Tully Grain Co. v. Fort Smith & W. R. Co. et al. 16 I. C. C. Rep. 28. (April 12, 1909.)

Complaint of unreasonable rate on snapped corn from Okemah, Okla., to Terrell, Tex., and demand for reparation.

At the time of the shipment in question defendants had in effect a rate on shelled corn of $23\frac{1}{2}$ c. per 100 lbs., the snapped corn rate being 125% thereof. Shortly thereafter defendants cancelled the high rate on snapped corn and made shelled corn rate applicable. They admitted the unreasonableness of the charge to complainants.

Held, (Clements, C.), (a) that in view of the reduction in August, 1907, and of the maintenance of the reduced rate until the present time, it was presumably the reasonable rate and reparation should be awarded accordingly;

(b) that in view of the fact that complainants had not brought these proceedings for more than 15 months after the voluntary reduc-

tion of the rate the defendants would be ordered to maintain the reduced rate only for two years from the date of its actual reduction.

Order accordingly.

877.—Stone-Ordean-Wells Co. v. Chicago, B. & Q. R. Co. et al.
16 I. C. C. Rep. 30. (April 13, 1909.)

Complaint of unreasonable rate on rice from New Orleans, La., to Billings, Mont., and demand for reparation.

The rate exacted was \$1.40, but after the filing of the complaint all the defendants concurred in publishing a \$1.07 rate. They denied, however, that the rate of \$1.40 when exacted was unreasonable, making a hearing necessary. At the hearing, the Chicago, Burlington & Quincy Railroad Co., the only one appearing, agreed that \$1.07 would have been a reasonable rate and desired that the complaint be treated as an informal one and a future rate established for only one year.

Held, (Clark, C.), (a) that in view of the fact that defendants' refusal to concede the relief had made a formal complaint necessary, the usual order would be entered requiring the reduced rate to be maintained for a period of not less than two years;

(b) that reparation would be awarded on the basis of the reduced rate.

Order accordingly.

879.—Sanford v. Western Express Co. et al. 16 I. C. C. Rep. 32.
(April 13, 1909.)

Complaint of unreasonable express charges on small packages from St. Paul, Minn., and New York, N. Y., to Courtenay, N. Dak.

The rate from St. Paul to Courtenay was made by the Western Express Co. only, while that from New York was a combination rate of the Wells Fargo and Western Express Companies. The complaint was founded on the disproportionately higher rates on packages weighing more than 7 lbs. as compared with those weighing less. It appeared that the lower rates on the small packages resulted from the competition with the United States mail; although the latter was available only up to 4 lbs. the defendants, as a matter of policy, extended their competitive rates to packages of 7 lbs.

Held, (Clark, C.), (affirming *Kindel v. Adams Express Co.* 634), that the rates in question were not shown to be unreasonable.

Complaint dismissed.

880.—Pyro Art Club v. United States Express Co. 16 I. C. C. Rep. 37. (April 12, 1909.)

Complaint of defendant's refusal to extend its free delivery service in Chicago to include complainant's place of business.

After the filing of the complaint the defendant satisfied the same

by granting the relief prayed for and a stipulation was filed asking that the proceedings be dismissed.

Held, (Clements, C.), that in accordance with the stipulation, the complaint would be dismissed.

881.—Duluth Log Co. v. Chicago, St. P., M & O. Ry. Co. et al. 16 I. C. C. Rep. 38. (April 6, 1909.)

Complaint of unreasonable charge on poles from Washburn, Wis., to Winside, Neb., and demand for reparation.

The car in question was weighed at point of origin and the net weight stated in the bill of lading was 36,700 lbs. The charges were finally assessed, however, on a corrected weight of 39,420 lbs. In the second case, the initial weight specified in the bill of lading was 29,400 lbs. and the corrected weight 31,220 lbs.

Held, (Prouty, C.), that carriers should properly charge for the actual weight carried and as the Commission was satisfied that the charge finally assessed was correct, the complaint should be dismissed.

882.—Macgillis & Gibbs Co. v. Chicago & Eastern Ill. R. Co. et al. 16 I. C. C. Rep. 40. (April 6, 1909.)

Complaint of unreasonable rate on cedar poles from Chicago, Ill., to Brady, Tex., and demand for reparation.

The rate charged was 52c. per 100 lbs., being the regular published rate on poles. At the time of the shipment, however, the rate on lumber was 38c., and had since been raised to 41c. per 100 lbs.

Held, (Prouty, C.), (a) that the rate on poles should not have exceeded that on lumber and reparation should be awarded on the basis of the 38c. rate;

(b) that no opinion should be expressed on the reasonableness of the present lumber rate;

(c) that the carriers should maintain for the future a rate on poles not exceeding that on lumber.

Order accordingly.

883.—Voorhees v. Atlantic Coast Line R. Co. et al. 16 I. C. C. Rep. 42. (April 12, 1909.)

Complaint of unreasonable charge on cabbages from St. Andrews, S. C., to New York, and demand for reparation.

The published tariffs of the defendants specified carload and less-than-carload rates, the carload rate being 60c. and the less-than-carload, 63c. It appeared from the testimony that the carload rate was offered with the understanding that the shipper should perform the loading service. This had been performed by the carriers prior to May, 1908. Subsequent to that date, where the carload rate was charged, the loading was done by the shippers, except in the case of the six shipments here involved. On these the defendant claimed the

right to charge the less-than-carload rate, in order to compensate itself for performing the loading service.

Held, (Clements, C.), (a) that as the shipments were offered in carload quantities they were entitled to a carload rate in the absence of a specific tariff provision specifying a charge for service of loading by the carriers;

(b) that the tariff should state separately all extra charges of every nature and since this was not stated, it could not lawfully be exacted, and the complainant was entitled to reparation on the basis of 3c. per 100 lbs.

Order accordingly.

884.—*Voorhees v. Atlantic Coast Line R. Co. et al.* 16 I. C. C. Rep. 45. (April 12, 1909.)

Complaint of unreasonable rate on lettuce in half-barrel packages from St. Andrews, S. C., to New York, N. Y., and demand for reparation.

The shipments in question were made in March and April, 1908, at which time the rate was 63c. per basket. At the time of the shipment in question there was a 32c. rate which was applicable, however, only to standard crates. This rate had been published by the Atlantic Coast Line with a notation that other carriers would certify their concurrence. The lettuce in question was not shipped in standard crates. In May, 1908, the rate in question had been reduced to 48c., which rate was now in effect. The evidence showed that the carriage of lettuce was an expensive traffic, requiring refrigeration and the carriage of a great deal of extra weight.

Held, (Clements, C.), (a) that under the tariffs the 32c. rate was not applicable to the shipment in question;

(b) that it was not, therefore, necessary to discuss the effect of the negative concurrence specified in the tariffs;

(c) that in view of the circumstances of carriage the 48c. rate was reasonable;

(d) that reparation should be awarded on the basis of the 48c. rate.

Order accordingly.

885.—*Virginia-Carolina Chemical Co. v. St. Louis S. W. Ry. Co.* 16 I. C. C. Rep. 49. (April 12, 1909.)

Complaint of unreasonable advance in rates on fertilizer from Shreveport, La., to Arkansas points on defendant's line, and demand for reparation.

This advance was made in January, 1906, and complainant asked that the lower rates previously in effect be restored. It appeared that fertilizer manufacturers in Memphis and New Orleans enjoyed a considerable advantage over those at Shreveport in the cost of manufacturing. The defendant contended that it had established abnormally

low rates for the benefit of complainants and other manufacturers over Shreveport, in order to give the industry at those points a start.

Held, (Clements, C.), (a) that the Commission would not order a reduction in the rates in question merely to enable Shreveport manufacturers to overcome natural advantages enjoyed by competitive producing points;

(b) that fertilizer being low grade traffic subject to no risk in transit and requiring no special service was entitled to a comparatively low rate;

(c) that an alteration in the present rates would be ordered as to a number of the points in question, the rates prescribed being, however, materially higher than those voluntarily maintained by the carriers prior to 1906;

(d) that reparation would be awarded on the basis of the new rates ordered, except as regards certain claims specified, which were barred by the Statute.

Order accordingly.

886.—Indianapolis Freight Bureau v. Cleveland, C. C. & St. L. Ry. Co. et al. 16 I. C. C. Rep. 56. (April 14, 1909.)

Complaint of unreasonable class rates from Indianapolis, Ind., to Missouri River points, as compared with rates from Chicago, and of unreasonable rate on chairs and furniture from Indianapolis, Ind., to Missouri River points.

The rates from Indianapolis to Missouri River points were constructed by adding the local rates from Indianapolis to East St. Louis to those beyond, the Mississippi River being used as a basing point. These shipments were carried through to destination on through bills of lading, without the intervention of the shipper at any junction. Through rates from Chicago to Missouri River points were constructed by means of differentials, the carriers west of the Mississippi River receiving less than their local rate. At Chicago very many more roads centered than at Indianapolis, making the competition much greater. The application of the "two-for-one" rule involved in Indianapolis Freight Bureau v. Cleveland, Cincinnati, Chicago and St. Louis Ry. Co. (841) was also discussed. The rate on furniture and chairs was discussed in the opinion, and the circumstances surrounding the traffic reviewed. The defendants contended that to reduce the Indianapolis rates would disturb the rate relation in a large territory.

Held, (Clark, C.), (a) that the present relation of class rates between Indianapolis and Chicago produced an undue preference of Chicago as against Indianapolis, this being brought about by the fact that in case of shipments from Indianapolis the through rate was made by the combination of the locals instead of being less than such combination;

(b) that the rate from Indianapolis on furniture and chairs was unreasonable and should be reduced to figures given;

(c) that in reference to the "two-for-one" rule the Commission would follow its decision in Indianapolis Freight Bureau v. Cleveland, C. C. & St. L. Ry. Co. *supra*;

(d) that the Commission would not refrain from correcting an unlawful rate relation by the fact that the issuance of the order in question would make necessary other arrangements in rates in connection with other points in the same general territory;

(e) that in view of the fact that the case of Burnham, Hanna, Munger case (697), involving same general question, was before the circuit court on a bill for an injunction, no order would be issued with reference to the discrimination against Indianapolis as to class rates, but an order concerning the rates on chairs and furniture would be entered in accordance with the views expressed.

887.—Valley Flour Mills v. Atchison, T. & S. F. Ry. Co. et al.
16 I. C. C. Rep. 73. (April 15, 1909.)

Complaint of discrimination against mills at Phoenix, Ariz., by reason of the high rate on wheat as compared with that on flour, and of general rate adjustment between Kansas points, Phoenix and Pacific Coast points.

In *Howard Mills Co. v. Missouri Pacific Ry. Co. et al.* (508) the Commission had investigated the relation of rates on wheat and flour as between Kansas and the Pacific coast, and had directed that the rate on flour to the Kansas points and California points should not exceed the rate on wheat by more than 7c. Prior to the issuance of this order, the wheat rate from Kansas points to Phoenix was 86c. and that on flour was \$1.35. After the issuance of the order the rate on flour was reduced to \$1.25 and that on wheat increased to \$1.18. Owing to local disadvantages, the Phoenix millers could not successfully compete with Kansas millers on flour for consumption at any distance from Phoenix, at the present rate. Complainant contended that the flour rate should be two-thirds the rate on wheat. Neither complainant nor any other Phoenix millers had been represented in the *Howard Mills* case.

Held, (Clark, C.), that although the Commission would not undertake to equalize commercial conditions in order to take from a locality advantages naturally belonging to it on account of its location, yet, since the milling industries of Arizona had been built up on an adjustment of rates long established, and since the carriers themselves were willing to accord to the Phoenix millers a larger differential than that directed in the order in the *Howard Mills* case, that order would be modified so as to prescribe rates from Kansas points to Phoenix not exceeding \$1 per 100 lbs., with a provision that the rate on flour should not exceed that on wheat by more than 12c.

Order accordingly.

888.—Wisconsin Pearl Button Co. v. Chicago, St. P., M. & O. Ry. Co. et al. 16 I. C. C. Rep. 80. (April 5, 1909.)

Complaint of unreasonable rate on clam shells from Mendota, Minn., to La Crosse, Wis., and demand for reparation.

The rate in question was 20c. per 100 lbs. The north-bound rate for the same length haul was but 6c. After the exaction of the rate in question it was reduced to 10.6c. Over the line of the defendants an 8c. rate was put in force shortly after the shipment in question.

Held, (Harlan, C.), that the 8c. rate was a reasonable one and reparation should be awarded on this basis.

889.—Dayton Chamber of Commerce v. Chicago, M. & St. P. Ry. Co. et al. 16 I. C. C. Rep. 82. (April 5, 1909.)

Complaint of unreasonable rate on non-edible grease from Austin, Minn., to Dayton, O., and demand for reparation.

The rate exacted was 33½c., which was a through class rate. The defendants alleged that at the time there was in effect a combination of local commodity rates amounting to 24.6c., but under the tariffs as interpreted by the Commission this combination rate was 29.1c. The defendants agreed, however, to the adjustment as to the shipments in question by payment of all charges exacted in excess of 25c.

Held, (Harlan, C.), that reparation would be awarded on the basis of the 25c. rate.

890.—Railroad Commission of Wisconsin v. Chicago & N. W. Ry. Co. et al. 16 I. C. C. Rep. 85. (April 15, 1909.)

Complaint of unreasonable carload and less-than-carload rates on cheese from stations in Wisconsin to Chicago, Ill.

Prior to 1899 there was no distinction between carload and less-than carload rates on cheese. Subsequent to that rate, by reason of various increases, the carload rates were raised about 12% and less-than carload rates 40%. The Wisconsin Commission had directed a reduction of the rates as to intrastate traffic and now sought to have the Commission order the carriers to make the interstate rates conform with those between points in Wisconsin. It appeared that there were certain points on the defendant's line called "concentration points" from which low rates were in effect. Defendants contended that by reason of this fact they should be permitted to charge higher rates than other points.

Held, (Cockrell, C.), (a) that it was no reason to permit higher rates on interstate shipments because low intra-state rates were permitted from a few points by the defendant;

(b) that the increase in rates was unreasonable, and they should be reduced to figures given;

(c) that no reparation was asked nor would any be awarded.
Order accordingly.

891.—Bedingfield & Co. v. Wisconsin Central Ry. Co. et al. 16 I. C. C. Rep. 93. (April 13, 1909.)

Complaint of unreasonable charge on mixed carloads of mineral water and ginger ale from Waukesha, Wis., to Macon, Ga.

The complainant did not appear at the hearing. The complaint was, therefore, dismissed for want of prosecution.

892.—Arkansas Fuel Co. v. Chicago, M. & St. P. Ry. Co. 16 I. C. C. Rep. 95. (April 5, 1909.)

Complaint of unreasonable rate on hay from Kansas City, Mo., to Seymour, Ia., and demand for reparation.

The shipment in question was made in July, 1907. A month before, a commodity rate on hay had been in effect, but this was cancelled and not again republished for two months. During the interval, the shipment in question moved. During the period of cancellation of the commodity rate, the class rate had been in effect, this being 1c. per 100 lbs. higher than the commodity rate. Defendant contended that the Commission had no power to award reparation for past unreasonable charges, its power being limited to ordering a reduction of existing rates for the future.

Held, (Harlan, C.), (a) that the Commission had power to award reparation on past shipments;

(b) that the charge exacted from complainant was excessive and reparation should be awarded on the basis of 1c. per 100 lbs.

Order accordingly.

893.—Kansas City Hay Co. et al. v. Chicago, M. & St. P. Ry. Co. et al. 16 I. C. C. Rep. 100. (April 5, 1909.)

Complaint of unreasonable rates on hay from Kansas City, Mo., to Mississippi River, Peoria, St. Paul, Chicago, and common points.

The question involved was similar to that in the previous case (892), the complaint being based on the cancellation of commodity rates during the period in which this shipment moved. The class rates exacted were somewhat higher than the commodity rates. Defendant contended that the Commission had no power to award reparation on past shipments.

Held, (Harlan, C.), (a) that the Commission had power to award reparation in a case like the present;

(b) that the increased charges were unreasonable, and that reparation should be awarded on the basis of the lower rates.

Order accordingly.

894.—Allender et al. v. Chicago, B. & Q. R. Co. et al. 16 I. C. C. Rep. 103. (April 13, 1909.)

Claim for damages for loss of employment in refusal to issue stop-over ticket in accordance with alleged contract.

Complainants in June, 1908, purchased two special tickets from

Bloomfield, Ia., to Ogden, Utah, entitling them to have issued to them at Ogden, for the return passage, similar tickets, with the privilege of stop-over in either direction. On their arrival at Ogden they applied to the agent for the return tickets, but through a mistake in forwarding advices, the latter refused to issue tickets in accordance with the contract, but finally allowed them straight return tickets. They alleged that by reason of their inability to stop over, they were prevented from stopping at Palisade, Col., where they expected to secure employment as fruit pickers, and claimed as damages \$4 expenses at Ogden and \$200 for loss of employment.

Held, (Harlan, C.), that without passing on the question as to the power of the Commission to award damages in a case like that in question, the damages alleged were not satisfactorily proved and were too speculative to be accepted as the basis for an award of damages either by the Commission or in a court of law.

Complaint dismissed.

895.—Ozark Fruit Growers' Association v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 106. (April 13, 1909.)

Complaint of unreasonable rates on strawberries and peaches from points in southwestern Missouri and northwestern Arkansas, and of unreasonable carload minimum on the same.

The opinion gives statistics with reference to the circumstances surrounding the transportation of the freight in question, showing the cost of service to the carrier. The fruit was perishable, requiring special service and there was a large waste of equipment. The carload minimum on strawberries was 17,000 lbs. and on peaches 20,000. The cars could readily be loaded to this minimum, but in some cases the fruit was not as well preserved as when a less amount was loaded. The minima for refrigeration and for transportation were different.

Held, (Lane, C.), (a) that in view of the facts presented, the rates were not unreasonable;

(b) that the carload minimum was also reasonable;

(c) that the interest of the shippers in such cases demanded that the minimum be fixed as high as the product might be carried under the most advantageous circumstances, and the rate per 100 lbs. as low as possible, based on this high minimum;

(d) that the minima for transportation charges and for refrigeration should be the same.

Order issued requiring the same minimum for refrigeration and transportation; as to other questions, complaint dismissed.

In 16 I. C. C. 153, the Commission, (Lane, C.), having investigated the rates for refrigeration on strawberries and peaches, held the same not to be unreasonable.

896.—**Watson Co. v. Lake Shore & M. S. Ry. Co. et al.** 16 I. C. C. Rep. 124. (April 13, 1909.)

Complaint of unreasonable rates on building and roofing paper from Erie, Pa., to points in Central Association Territory.

It appeared that while the complaint was pending, the reduction sought by complainant had been substantially put into effect and complainant thereupon made a motion to dismiss.

Complaint dismissed accordingly.

897.—**Thatcher Mfg. Co. v. New York Central & H. R. R. Co. et al.** 16 I. C. C. Rep. 126. (April 13, 1909.)

Complaint of unreasonable charge on cullet or broken glass from New York City to Kane, Pa., and demand for reparation.

The charge exacted resulted from misrouting by the defendant's agent at New York and produced an overcharge of 5½c. per 100 lbs. No routing directions were given by the complainant. The route selected by the defendant's agent was not the cheapest possible.

Held, (Lane, C.), (a) that this was a typical misrouting case governed by the rulings and repeated decisions of the Commission;

(b) that reparation would be awarded on the basis of the rate which would have been charged by the cheapest possible route.

Order accordingly.

898.—**Zellerbach Paper Co. v. Atchison, T. & S. F. Ry. Co.** 16 I. C. C. Rep. 128. (April 13, 1909.)

Complaint of unreasonable carload minimum on paper pails from Chicago, Ill., to San Francisco, Cal., and demand for reparation.

The hearing was suspended while negotiations for settlement were pending and these being consummated, the complaint prayed for dismissal.

Complaint dismissed.

899.—**Hendrickson Lumber Co. v. Kansas City Southern Ry. Co. et al.** 16 I. C. C. Rep. 129. (April 13, 1909.)

Claim for reparation on account of misrouting oak lumber from DeQueen, Ark., to Memphis, Tenn.

The complainant gave no directions as to routing. By the cheapest route there was a combination rate of 22c., whereas the lumber was routed over a route by which the rate was 30c. The shipment was made April 1, 1909.

Held, (Harlan, C.), (a) that in accordance with the order of the Commission of March 18, 1907, promulgated in Ruling 70 of Tariff 15-A, the defendant should voluntarily have adjusted the claim;

(b) that the petitioner was clearly entitled to reparation.

900.—**Planters Gin & Compress Co. et al. v. Yazoo & M. V. R. Co.** 16 I. C. C. Rep. 131. (April 15, 1909.)

Complaint of preference of Port Gibson, Miss., over Hermanville, Miss., in rates on compressed cotton to New Orleans, La.

Port Gibson was 10 miles west of Hermanville and 7 miles from the east bank of the Mississippi. Both points were substantially the same distance from New Orleans. The rate from Port Gibson, however, was $4\frac{1}{2}c.$ less than that from Hermanville, on compressed cotton, although only 2c. less on uncompressed cotton. There had originally been water competition at Port Gibson, but this was much less strong than formerly, the river having receded so as to make transportation difficult.

Held, (Lane, C.), (a) that although compelling water competition entitled a carrier to make certain preferences in rates between localities, the amount of the discrimination must not be greater than the dissimilarity of circumstances demanded;

(b) that in the present case the rate from Port Gibson should not be more than 2c. less than that from Hermanville on compressed cotton;

(c) that reparation would be awarded accordingly.
Order accordingly.

901.—Ozark Fruit Growers Assn. v. St. Louis & S. F. R. Co. et al.
16 I. C. C. Rep. 134. (April 15, 1909.)

Complaint of unreasonable rate on apples from the Ozark fruit region in Arkansas and Missouri, to eastern, southeastern and southern points, and of unreasonable minimum carload regulations.

The basis of the complaint was the fact that lower rates were charged to northern markets; that lower rates were charged from other apple-producing sections to complainant's markets; and that rates on live stock were lower. It was also alleged that defendants assessed rates per package under which the estimated weight was in excess of the actual weight. The minimum carload weight was 24,000 lbs. and complainant contended that it should be 20,000. It appeared, however, that the 24,000 lbs. could be readily loaded in a car, but that this amount could not be sold to advantage at one time. The testimony did not show that the estimated weights differed from the actual weights. It appeared that to make any changes in the rates to the southeast would result in a great rate revolution.

Held, (Lane, C.), (a) that carriers had the right to establish minimum weights as high as would permit the commodity to be safely carried without injury, but there was no duty on their part to establish a minimum of such an amount as the consignee or purchaser decided to be advantageous to him;

(b) the minimum established should be in relation to the capacity of the car and not to the needs or desires of the purchaser of the product;

(c) that the minimum in force would not be reduced;

(d) that there was no evidence as to the irregularities in estimating weights;

(e) that the rates to points in Oklahoma and Texas were in certain cases unreasonable and should be reduced;

(f) that the other rates were reasonable and as to them the complaint would be dismissed.

Case held open for voluntary action by the carriers in conformity to the opinion.

902.—Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. Ry. Co. et al. 16 I. C. C. Rep. 142. (May 3, 1909.)

Complaint of preference of Cincinnati, O., over Indianapolis in rates to southern points, and of unreasonable rates from Indianapolis.

It appeared that since the filing of the complaint the subject matter thereof had been satisfied voluntarily by the carriers and on complainant's motion, complaint dismissed.

903.—De Camp Bros. et al. v. Southern Ry. Co. et al. 16 I. C. C. Rep. 144. (May 4, 1909.)

Complaint of unreasonable rate on pig iron from Sheffield, Ala., to Hutchinson, Kan., and demand for reparation.

The complaint was based on the fact that upon complainants' inquiry of rate from defendants' agent he was given a rate of \$7.84 per ton, but was told that defendant would protect a rate of \$6.39 in force over lines of a competing road. No tariff, however, was ever filed reducing the rate to \$6.39.

Held, (Cockrell, C.), (a) that in order to justify the Commission in making the required ruling, it would be necessary to find that the \$7.84 rate was unreasonable;

(b) that there was no evidence to justify such a finding, and that therefore the complaint would be dismissed.

905.—Rodehaver v. Missouri, K. & T. Ry. Co. 16 I. C. C. Rep. 146. (May 4, 1909.)

Demand for reparation on account of refusal by defendant to make a refund on reconsignment of hay at St. Louis, Mo., in accordance with published regulations.

Defendant had in force a regulation under which, where hay going from Missouri, Kansas and Indian Territory, points on the Missouri, Kansas & Texas Railway, was reconsigned to points south of the Ohio River, and east of the Mississippi, a refund would be made on the initial charges on presentation of proper expense bills, etc. It appeared that the Missouri Commission Company had shipped in four carloads of hay from Kansas to St. Louis which hay was sold to customers not in the territory south of the Ohio or east of the Mississippi. At about the same time, another shipper had shipped from

Illinois points four other carloads of hay which was subsequently reconsigned to points east of the Mississippi and south of the Ohio. Complainants obtained the expense bills of the first shipper and the duplicate bills of lading of the second, and presented them to the defendant, demanding a refund in accordance with the tariff, which defendant refused to make.

Held, (Cockrell, C.), that in accordance with the Commission's ruling of June 25, 1908, under the heading of "Substituting tonnage at transit point," the defendant's refusal was entirely justified.

Complaint dismissed.

906.—*La Salle Paper Co. v. Michigan Central R. Co. et al.* 16 I. C. C. Rep. 149. (May 4, 1909.)

Complaint of unreasonable rate on paper stock from Chicago, Ill., to South Bend, Ind.

The rate in question was 8c. per 100 lbs. on paper stock, while on manufactured paper it was but 6c. The defendant justified the higher rate on raw material on the ground that as to paper it desired to meet competition, whereas it did not desire to meet competition on paper stock. It appeared, from statistics furnished, that the rate on paper stock for similar distances in this locality did not differ materially from that in question, and that the earnings per car over other lines were about the same.

Held, (Cockrell, C.), (a) that the rate in question did not appear to be unreasonable;

(b) that the railroads were authorized to meet or not to meet competition as it seemed to them in their interest, and no unjust discrimination therefore appeared.

Complaint dismissed.

907.—*Lagomarcino-Grupe Co. et al. v. Illinois Central R. Co. et al.* 16 I. C. C. Rep. 151. (May 4, 1909.)

Complaint of unreasonable rate on bananas from New Orleans, La., and Mobile, Ala., to points in Iowa.

In *Topeka Banana Dealers' Assn. v. St. Louis & San Francisco Ry. Co.* (653) the Commission had prescribed rates on bananas to nearby territory higher than those in question. It appeared that prior to 1906 there had existed lower rates than those now in effect.

Held, (Lane, C.), (a) that while the previous existence of lower rates was always persuasive, it was not conclusive that because the rates were lower at one time the present rates were unreasonable;

(b) that the present adjustment of rates on bananas was as good as could well exist.

Complaint dismissed.

908.—*Indiana Steel & Wire Co. et al. v. Chicago, R. I. & P. Ry. Co. et al.* 16 I. C. C. Rep. 155. (May 3, 1909.)

Complaint of preference of Chicago territory over Indiana territory on shipments of steel and wire products to Arkansas common points.

From 1902 to 1907 the Arkansas Freight Committee, representing all the defendants, had prescribed identical rates from what was known as the Cincinnati-Chicago territory, which included Muncie, Ind., and Kokomo, Ind., where complainants' factories were situated. On June 27, 1907, the Arkansas Freight Committee put in force a tariff advancing the rate 4c. per 100 lbs. from the Arkansas common points, and leaving the same rate from Chicago territory. The American Steel & Wire Co., competitors of complainants, shipped from the Chicago territory and by reason of the alteration in rates was able to undersell the complainants in Arkansas. It appeared that the initial carriers from the complainants' mills did not participate in shipments from Chicago territory although the rates from Chicago territory and from Cincinnati territory were filed as joint rates and concurred in by all the defendants. The complaint was based entirely on violation of section 3 and complainants contended that as some carriers did not serve the same points there could be no violation of section 3.

Held, (Cockrell, C.), (a) that the concurrence by all the defendants in the tariffs to both points brought the case within the jurisdiction of the Commission under section 3;

(b) that the maintenance for a long period of the same rates between Cincinnati and Arkansas as those in force between Chicago and Arkansas, on the basis of which rates complainants' business was built up, entitled complainants to the maintenance of rates as low as those allowed complainants' competitors in Chicago;

Order accordingly.

Knapp, Ch., dissented on the ground that no violation of section 3 appeared since the same carriers did not serve both points, and the mere fact that the rates in question were published in a single tariff did not alter the case.

909.—KalisPELL Lumber Co. et al. v. Great Northern Ry. Co. et al.
16 I. C. C. Rep. 164. (May 4, 1909.)

Complaint of unreasonable rate from complainants' mills in Flat Head County, Mont., to points in North Dakota, as compared to rates from the Spokane and Pacific Coast groups, and demand for reparation.

From the testimony it appeared that when the Great Northern Ry. Co. first penetrated to the Pacific Coast in 1893, it established a 40c. rate from points on the coast to St. Paul, Minn., which rate was subsequently applied to all intermediate points as new lumber producing sections were opened in the Rocky Mountains and in Minnesota and North Dakota. In 1906, however, mills in the Kalispell District in Idaho found it difficult to compete with the Pacific

Coast points under the 40c. rate, since the Kalispell District produced mostly low grade lumber. They thereupon applied to the railroads for a differential and obtained the same. There was also recognized during the period subsequent to 1893 a group known as the Spokane District, including the region near Spokane, Wash. Sometimes this group was allowed the same rates as the Pacific Coast points and sometimes slightly lower rates. In November, 1907, the rates from all these groups were advanced. The advance in the coast group was attacked in *Pacific Coast Lumber Mfrs. Assn. v. Northern Pacific Ry. Co. et al.* (664) and the advance as to the Spokane group in *Potlatch Lumber Co. v. Northern Pacific Ry. Co. et al.* (665). The original complaint in this case was filed prior to the decision in those cases, and attacked the advance from the Kalispell District. The decisions in the two cases referred to, however, while reducing the rates from the Spokane group, extended the Spokane group eastwardly to include complainants' mills and so abolished the differential which complainants had theretofore enjoyed under the rates from Spokane District. Complainant now asked that these differentials be substantially restored. The distances from complainants' mills to destination were lower than those from the Spokane group and also the commercial conditions attendant upon the manufacture of complainants' lumber were less favorable than in the Spokane District. Complainants also asked that certain through rates via defendants' lines theretofore established under joint tariffs and cancelled November 1st, 1907 be restored. On this point defendants did not answer.

Held, (Cockrell, C.), (a) that in view of the lesser distance and the inferior commercial conditions from the Kalispell District and in view of the voluntary recognition by the defendants of the right of the Kalispell District to a differential as against Spokane prior to November, 1907, a differential would be ordered as specified, the differential allowed being not, however, as large as that asked for;

(b) that the through rates should be reestablished as prayed for in the petition;

(c) that the said new routes and rates prescribed would affect the marketing of lumber and in order that dealers and producers might have the opportunity to adapt their affairs to newly created conditions, the changes herein provided for should be made on statutory notice;

(d) that these conclusions were not to be understood as forming the basis for any reparation.

Order accordingly.

910.—*Big Blackfoot Milling Co. v. Northern Pacific Ry. Co. et al.*
16 I. C. C. Rep. 173. (May 4, 1909.)

Complaint of unreasonable rates on lumber from the Missoula District to the Missouri River and points east.

Prior to October, 1908, the Missoula District had always been granted a differential under the rate from Spokane and coast group points to North Dakota and Missouri River territory. These differentials had been voluntarily established and ranged from 3c. to 9c. below the Spokane rates in the North Dakota territory and from 5c. to 10c. in the Missouri River territory. There was a graded differential as to a number of points in the Missoula territory, so that a number of complainants' mills took different rates, the most easterly mills receiving the lowest rate. These differentials had been abrogated in 1908, and complainant desired that they be restored. The rates complained of were those established in compliance with the order of the Commission in *Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co.*, (665) which restored the rate previously allowed the Spokane group, but united the Spokane group with the Montana-Oregon group, destroying the differential in favor of complainants. The complainants presented the same argument presented in *Kalispell Lumber Co. et al. v. Great Northern Ry. Co. et al.*, (897) alleging that the differential under the Spokane group should be accorded the Missoula District for commercial and transportation reasons. From the evidence it appeared that commercial conditions at complainants' mill more nearly approximated those at Spokane than those from the Kalispell District. It appeared also that the complainants' mill was immediately south of the mills of the complainant in the Kalispell case, they being located approximately the same distance from destination.

Held, (Cockrell, C.), (a) that under the evidence complainants were entitled to a graded differential in figures named below rates from points in the Spokane group;

(b) that as the tariffs in this case were newly constructed and commercial conditions did not warrant an immediate change, the new rates to be established should be put in force on statutory notice;

(c) that these conclusions were not to be understood as forming a basis for any reparation.

Order accordingly.

911.—*Cohen & Co. v. Southern Ry. Co. et al.* 16 I. C. C. Rep. 177. (May 3, 1909.)

Complaint of unreasonable rate on marble from Long Island City, N. Y., to Shipman, Va., and demand for reparation.

The rate charged was 54c. per 100 lbs. Complainant insisted that 22c. would have been a reasonable rate and asked for reparation on that basis. At the time these shipments moved, the joint published rate on marble of this character was 18c. per 100 lbs., when released to a value of 20c. per cubic foot, and 22c. per 100 lbs. when released to a value of 40c. per cubic foot. Unless so released, the first class rate of 54c. per 100 lbs. was applied. The value of the cut marble

in question was about \$3 per cubic foot and was at least 90c. per cubic foot before any labor had been done on it. The average value of cut marble was from \$3 to \$5 per cubic foot. Since the hearing, the Southern Classification Committee had signified its willingness to make changes in the classification and to eliminate the question of value.

Held, (Prouty, C.), (a) that in view of the facts the rate charged was unreasonable in the amount that it exceeded 22c. per 100 lbs., and complainant was entitled to reparation on that basis;

(b) that in view of the proposed revision of the classification no order would be made prescribing a rate for the future.

912.—Maricopa County Commercial Club v. Wells Fargo & Co.
16 I. C. C. Rep. 182. (May 3, 1909.)

Complaint of unreasonable express rates between Phoenix, Mesa and Temple in Maricopa County to various points in the United States.

It appeared that the points in question required express service on a large number of commodities which could not readily be shipped by freight. It also appeared that the defendant company was very prosperous and that its income largely exceeded its expenses. In view of the circumstances,

Held, (Prouty, C.), that the rates in question were unreasonable and should be reduced to figures named.

Order accordingly.

913.—Noble v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 186.
(May 10, 1909.)

Complaint of unreasonable rates on elm hoops from Prairie Grove, Ark., to Nashville, Tenn., and demand for reparation.

The freight was delivered without routing instructions, but was not sent over the route which would have afforded the lowest charge. There was no commodity rate in effect from Prairie Grove to Nashville, although there was a commodity rate in effect from Fayetteville, Ark., 13 miles east of Prairie Grove. Defendants admitted that the rate should be the same from Prairie Grove as from Fayetteville and so adjusted its tariffs subsequent to the shipment in question. The misrouting was caused by the agent of the St. Louis & San Francisco Ry. Co.

Held, (Clark, C.), (a) that reparation should be awarded on the basis of the excess in the rate charged over that in effect from Fayetteville;

(b) that reparation should also be awarded for the excess by reason of the misrouting, the latter to be paid by the St. Louis & San Francisco Ry. Co. without recourse to any other carrier.

Order accordingly.

914.—Counsil v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 188. (May 10, 1909.)

Demand for reparation on account of alleged misrouting of cattle from Haverhill, Kan., to East St. Louis, Ill.

It appeared that the complainant had ordered the shipments by way of Kansas City, Mo., to try the market there. The rate applicable via Kansas City was higher than via East St. Louis and complainant demanded the excess.

Held, (Clark, C.), that as complainant had himself ordered the routing, there was no basis for this demand for reparation.

Complaint dismissed.

915.—Diehl, doing business as Capital Pine Co. v. Chicago, M. & St. P. Ry. Co. et al. 16 I. C. C. Rep. 190. (May 10, 1909.)

Complaint of unreasonable rate on sawdust from Duluth, Minn., to Andover, S. Dak.

The rate exacted was 16c. per 100 lbs. At the time there was in effect a commodity rate of 4c. from Duluth to St. Paul, and a distance tariff of 8½c. from St. Paul to Andover applicable to lumber, including sawdust. The distance tariff, however, could not have been applied in this case unless complainant's agent had himself attended to the reshipment at St. Paul, since there was a through commodity rate in effect. Subsequent to the complaint the rate in question had apparently been reduced to 12½c.

Held, (Clark, C.), (a) that under the circumstances the existence of the low combination rate did not give rise to a presumption that the through rate was unreasonable;

(b) that although a voluntary reduction of a rate created no presumption of liability for reparation on shipments at the rate as it existed before the reduction, yet in the present case, since the reduction was made after the filing of the complaint, it was evidence that the prior rate was unreasonable and reparation should be awarded accordingly.

916.—Minneapolis Threshing Machine Co. v. Chicago, St. P., M. & O. Ry. Co. et al. 16 I. C. C. Rep. 193. (May 10, 1909.)

Complaint of unreasonable rate on agricultural implements from Minneapolis, Minn., to New York, N. Y., for export.

The rate in question was originally 45c. Subsequent to the filing of the complaint a rate of 37½c. was put in force. No evidence of its unreasonableness was offered, however, except a comparison with certain other rates on a ton mile basis, and from this comparison nothing abnormal appeared.

Held, (Clark, C.), (a) that the 37½c. was not shown to be unreasonable;

(b) that this decision formed no basis for reparation on prior shipments at the 45c. rate.

Order accordingly.

917.—Kansas City Transportation Bureau of the Commercial Club v. Atchison, T. & S. F. Ry. Co. et al. 16 I. C. C. Rep. 195. (May 10, 1909.)

Complaint of unreasonable proportional rates on grain from Kansas City to eastern points where the same had come from west of the Missouri River, and of preference of Omaha over Kansas City by refusal to allow a lower differential than 1c. per 100 lbs. to Kansas City over Omaha in connection with such proportional rates.

Both Omaha and Kansas City were "primary" grain markets. Kansas City had existed as such for 25 years, and Omaha but 4 or 5 years. Omaha was growing very rapidly as a grain market. Under the existing rate situation the sum of the rates from the points of production through both Kansas City and Omaha to points east were so adjusted as to put Kansas City and Omaha on a substantial equality. The situation was also greatly complicated by the adjustment of rates through other cities so that an alteration of the rate from Kansas City would have necessitated many changes throughout the territory. The complainant asked either that the rate from Kansas City be lowered or that the Omaha rate be raised. The present rate situation was the result of a great deal of adjustment and it appeared that it was very difficult to make any arrangement so as to satisfy all points. It appeared that even if the differential were raised it might well be that Kansas City would not benefit thereby, as Omaha shippers would be enabled to secure the same results by shipping over other routes. Complainant relied principally on the fact that Kansas City was 137 miles nearer St. Louis or Cairo than Omaha, and 194 miles nearer to Memphis, New Orleans, or Galveston than Omaha.

Held, (Clark, C.), (a) that distance alone could not be adopted as a measure of rates, but that competition among carriers was also an important factor to which carriers could give weight in making rates;

(b) that in transportation of low grade commodities moving in bulk in large quantities, group or blanket rates were recognized as long established and proper;

(c) that in view of the necessary disturbance resulting from an alteration of the rate situation and of the doubtful benefit to Kansas City from altering this differential, the complaint would be dismissed.

918.—Beggs v. Wabash R. Co. 16 I. C. C. Rep. 208. (May 3, 1909.)

Complaint of unreasonable charge on corn from Bates, Ill., to Detroit, Mich., and demand for reparation.

The alleged overcharge resulted from the fact that complainant asked for a 40,000 lb. car, but received a 60,000 lb. one instead. He was assessed on the minimum rate for a 60,000 car. The tariffs did

not provide that where a larger capacity car was furnished than that ordered, the minimum applicable to the smaller car should be observed.

Held, (Prouty, C.), (a) that the tariffs should be altered so as to insert the above provision;

(b) that inasmuch as complainant tendered a greater amount than the capacity of the car ordered, he should have been assessed only on the actual weight of the shipment and was entitled to a refund of the excess charge.

Order accordingly.

919.—Davenport Commercial Club v. Yazoo & Mississippi V. R. Co. et al. 16 I. C. C. Rep. 209. (May 10, 1909.)

Complaint of unreasonable rate on cyprus lumber from Baden and Kirkpatrick, Miss., to Davenport, Ia., and demand for reparation.

The complaint was based on the fact that the rates from Baden and Kirkpatrick exceeded those from Tutwiler and Drew, Miss., more distant points on the same line. No substantial dissimilarity of circumstances at the points in question was apparent.

Held, (Clark, C.), that the rates in question were in clear violation of section 4 and reparation should be awarded on the basis of the excess charge.

Order accordingly.

920.—Sunderland Bros. Co. v. Chicago & N. W. Ry. Co. et al. 16 I. C. C. Rep. 212. (May 10, 1909.)

Complaint of unreasonable rate on soft coal from Sterling, Ill., to Wausa, Neb., and demand for reparation.

At the time of the shipment in question there was no published through rate between these points and the rate charged was a combination rate of \$5.20 per ton, which defendants admitted was unreasonable in so far as it exceeded \$2.70, but asked that they be not required to put in effect this rate for the future as no coal moved over the route in question.

Held, (Clark, C.), (a) that reparation should be awarded on the basis of the admitted overcharge;

(b) that a \$2.70 rate should be observed for the future.

Order accordingly.

921.—Davis v. West Jersey Express Co. et al. 16 I. C. C. Rep. 214. (May 10, 1909.)

Complaint of unreasonable express rate on small live animals from Vineland, N. J., to various points in the United States.

The complainant was engaged in breeding and raising small animals (guinea pigs, rabbits and rats) for laboratory and scientific purposes, and shipped them in secure containers, requiring no feed, etc. Defendants charged double merchandise rates on such ship-

ments. By special tariff provisions a number of animals and birds took merchandise rates, and animals and birds also took this rate where the rate was more than \$2 per 100 lbs. It appeared that the rule in question grew up when the traffic was confined to pet stock, and complainant contended that, as he raised animals for commercial purposes, his shipments were entitled to special consideration.

Held, (Clark, C.), (a) that the use to which articles were to be put, where there was no difference in the articles or dissimilarity in the conditions of transportation, could not form a lawful basis of a difference in rates;

(b) that the mere fact that certain live animals were used for scientific purposes would not entitle them to a less rate than similar animals used for food or other purposes;

(c) that there was no substantial reason for charging double merchandise rates in cases where the rate on animals was less than \$2;

(d) that the rates exacted were unreasonable and where the animals in question were shipped in secure containers and did not require feed and water *en route* the rates should not exceed merchandise rates.

Order accordingly.

922.—Milwaukee Falls Chair Co. v. Chicago, M. & St. P. Ry. Co.

16 I. C. C. Rep. 217. (May 11, 1909.)

Complaint of unreasonable rate on chairs from Grafton, Wis., to Chicago, Ill., and demand for reparation.

Grafton was a point on the defendant's line between Plymouth, Wis., and Chicago. Prior to January, 1908, the rate on chairs from Plymouth to Chicago contained a long and short haul provision which had the effect of giving Grafton the same rate. On that date this provision was cancelled, eliminating the long and short haul provision. It was restored in September, 1908, but between the two dates complainant shipped nine carloads of chairs on which he was charged a rate $2\frac{1}{2}c.$ higher than that from Plymouth. An overcharge was also exacted from him on another shipment through a mistake. It further appeared that defendant's tariff contained a provision that where one car could not be furnished to accommodate the minimum weight of light and bulky articles, two cars might be furnished and charges assessed on the basis of one car. By tariff provision the defendant agreed to absorb switching charges on carload shipments but did not specifically provide for switching two cars in place of one. On a certain shipment, defendant furnished two cars in accordance with the rule and exacted a switching charge on one of them.

Held, (Knapp, Ch.), (a) that the charge from Grafton in excess of that from Plymouth was unreasonable and reparation should be awarded;

(b) that the overcharge resulting from the mistake should be refunded;

(c) that the reasonable interpretation of the tariff was that where two cars were furnished for one, the shipper should be charged only on the basis of a single car, and switching charges on both cars should, therefore, have been absorbed.

Order for reparation accordingly.

923.—Enterprise Fuel Co. v. Pennsylvania R. R. Co. et al. 16 I. C. C. Rep. 219. (April 13, 1909.)

Petition for the establishment of a through rate on coal from Alden, Pa., to Walbrook and Hillen, points within the city limits of Baltimore, Md.

A certain high grade of anthracite coal came from the Alden colliery in the Wyoming coal district of Pennsylvania. Complainant had built up a business in this coal. The Pennsylvania Railroad Co. had provided and set apart certain lands in Baltimore which it rented at a reasonable figure to parties using the same as coal yards, and made a through coal rate of \$2.05 or \$2.10 to these yards. Walbrook was a station on the Western Maryland line, three or four miles from the Pennsylvania's main coal terminal, there being a physical connection between the Western Maryland and the Pennsylvania at Hanover, 50 miles from Baltimore. No through rate, however, existed to Walbrook, the Pennsylvania desiring to send the traffic to its main terminal and secure a longer haul. Hillen was also situated on the Western Maryland line within the city of Baltimore, about one mile distant from the Pennsylvania's main terminal. It appeared that the complainant had formerly had space at the main terminal but was now unable to secure such and could not compete with other coal dealers after incurring the expense of transporting the coal one mile by wagon.

Held, (Lane, C.), (a) that there might be a through route from a common point of origin to a city which was satisfactory, and yet under the act the Commission might have power to establish another through route from the same point to another section of the same city;

(b) that "a railroad may not say that it can retain a monopoly of a certain traffic no matter what its service or what the public necessities require. A shipper, on the other hand, is not entitled to a through route because he might not be as conveniently served by one railroad as another;"

(c) that within a large city the existence of one through route did not do away with the necessity of establishing another through route to a distant point within the city limits;

(d) that under the facts, Walbrook should be regarded from a transportation point of view as a distinct and separate community;

(e) that the situation with reference to Hillen station was, however, different; the complainant had placed itself voluntarily on the

Western Maryland tracks at a point which did not form a distinct transportation point from the regular Pennsylvania terminal;

(f) that the act did not require all carriers to unite in through routes to and from all points;

(g) that there appeared to be a discrimination against complainant in the refusal to allow him yard space at the Pennsylvania terminal but as the defendant's officials were disposed to correct this by allowing complainant space, no action would be taken by the Commission.

Order that defendants form a through route via Hanover at a rate not to exceed \$2.20 per gross ton to the Walbrook station, the division of the rate to be left for the present to the defendants.

924.—Cozart v. Southern Ry. Co. 16 I. C. C. Rep. 226. (May 10, 1909.)

Complaint of discrimination against complainant, a colored man, by denial of facilities to him accorded to white passengers.

The complainant was a newspaper correspondent living at Atlantic City, N. J., and in March, 1908, he and his wife were passengers on defendant's train from Atlanta, Ga., to Washington, D. C. The complainant alleged that the car in which he was placed was in many respects inferior to that allowed white passengers. From the testimony, however, it appeared that the defendant had taken reasonable steps to see to it that there was no discrimination against colored passengers and the accommodations furnished the latter, as a general rule, appeared to be entirely reasonable. The complaint was not filed until six months after the journey and by reason of this fact the defendant was unable to produce satisfactory evidence with reference to the particular accommodations allowed complainant.

Held, (Clark, C.), that while affirming the principle established in *Edwards v. Nashville, C. & St. L. Ry. Co. et al.* (506) that equal accommodations must be furnished white and colored passengers, it was not apparent under the facts of this case that complainant had been denied such facilities as he was entitled to.

Complaint dismissed.

925.—Douglas & Co. v. Chicago, R. I. & P. Ry. Co. et al. 16 I. C. C. Rep. 232. (May 10, 1909.)

Complaint of discrimination against complainant and in favor of other millers and manufacturers by withdrawal of transit privileges on grain shipped in from western points to Cedar Rapids, Ia., subsequently manufactured into starch and reshipped.

Complainant operated a starch mill at Cedar Rapids, Ia., which began the manufacture of starch in 1903. Prior to its establishment, defendants had for a long time accorded milling-in-transit privileges on all grain, and before building its plant complainant had consulted defendants' officers and was assured that it would be granted as

liberal transit privileges as were allowed other manufacturers of grain products. The transit privileges on starch continued until early in 1908 when they were partly withdrawn, resulting in an increase of 25% to 100% in the rates affected. The Quaker Oats Company also operated a cereal plant at Cedar Rapids but did not manufacture any starch. It ground a large amount of corn for mixing with its by-products in the manufacture of feed, which was included in the transit privileges still in force. The Rock Island tariff complicated the situation by containing a list of products taking grain rates there being included therein "all uncooked manufactured products of corn." The weight of the testimony was to the effect that starch was an uncooked product. The Rock Island did not give any reason for withdrawing these transit privileges or allege that the prior rate was unremunerative, but contended that there was no discrimination involved, since there was no competition in the sale of starch and the products on which the transit privilege was allowed, and since, in reference to starch, feed, and other products, manufacturers were placed on exactly the same footing. Defendants also contended that the Commission had no power to order the granting of the milling-in-transit privileges, and that as starch was a manufactured product, it should naturally take a higher rate than that applicable to grain.

Held, (Clark, C.), (a) that the Commission had frequently held that where a plant had been established and money invested on the faith of certain transportation rates and conditions upon which the life of the plant depended, the carrier might not increase those rates and charges to the serious disadvantage of such investment without good cause or reason;

(b) that the principle that ordinarily raw materials received rates lower than manufactured products was not here controlling, since defendants voluntarily allowed other producing companies the transit privileges;

(c) that although there was a limit to the products which could reasonably be included in those allowed a transit privilege at the raw material rate, yet it was clearly a discrimination to single out one or more of several mill products of grain and withhold from them transit privileges allowed at competitive points to other mill products of a similar character, where there was competition between the millers of the grain either in marketing their product or in securing their material for milling;

(d) that even though the Commission had no power to direct a carrier to grant a transit privilege, there was no question as to its right and power to order the removal of an unjust discrimination and to prescribe such reasonable rates and regulations as would effect such removal;

(e) (semble) that the present case showed an unreasonable discrimination against complainant which should be corrected;

(f) that no order would be issued, but defendants given until June 15, 1909, to submit a plan for removing the unjust discrimination against complainant.

926.—In re Contracts of Express Companies for Free Transportation of Their Men and Materials Over Railroads. 16 I. C. C. Rep. 246. (May 11, 1909.)

Proceedings of inquiry to determine the lawfulness of provisions by defendants for the free transportation of men and materials in the contracts under which defendant express companies operate over various lines of railway.

The express companies were the Adams Express Co., the Pacific Express Co., the American Express Co., the Southern Express Co., the United States Express Co., and the Wells Fargo & Co. The course of business under the contracts in question involved the legality of transportation of the following: (1) The hauling of express cars containing express matter with messengers, etc. (2) The free transportation of route agents employed by the express company in traveling over the line of railroad supervising its business. These men were carried usually in passenger trains. (3) The free transportation by the railroad of wagons, desks, furniture, materials or supplies to be used by the express company in its business. This transportation was usually by freight. (4) The transportation by the express company for the railroad of small and valuable packages. It appeared that the express company paid the railroad a certain per cent. of its gross receipts. Under certain contracts the men and supplies under (2) and (3), above, were transported free only when employed on the line of the particular railroad, but under other contracts they were handled free when working or intended for use at points off the line of the railroad.

Held, (Prouty, C.), (a) that the railroad might properly transport free, men and supplies of the express company when employed or used in the conduct of the express business on that line of railroad, and the express company might transport free for the railroad packages between points on its own line of railroad;

(b) that when men and supplies were intended for use at some point off the line of the railroad transporting them, they were not discharging a service which the railroad might itself discharge or in which the railroad was directly interested, and, therefore, the railroad could not legally transport them without charge;

(c) that the act required carriers to pay tariff rates over the lines of other carriers in the same way that individuals were required to do;

(d) that the fact that the express companies and carriers had entered into contracts for the transportation of the men and commodities in question subsequent to 1906, did not deprive Congress of the power to forbid such transportation at that date, since the contracts

were subject to the subsequent regulation by Congress, and further, since the transportation in question was forbidden under the original act of 1887.

927.—Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. Ry. Co. et al. 16 I. C. C. Rep. 254. (May 3, 1909.)

Complaint of unreasonable rates on light and bulky articles in carloads and part carloads in excess of full carloads from Indianapolis, Ind., to common points in Texas and Arkansas and to certain points in Oklahoma and Louisiana, as compared to rates to the same territory from Cincinnati, Chicago, and other points in the vicinity; of preference of Chicago over Indianapolis by certain of the defendants in respect to class and commodity rates on shipments to Oklahoma; of preference of Chicago, Cincinnati and other nearby points over Indianapolis in the application of class rates on vehicles, etc., to Arkansas common points; and of preference of Cincinnati and Louisville over Indianapolis in application of class rates to Louisiana points.

Under the defendants' tariffs, in case of shipments from Cincinnati, Chicago, Louisville, New Albany and Evansville, in the transportation of light and bulky articles, two cars might be used, the combined measurement of which did not exceed 72 feet, on the basis of the actual weight, at carload rates, subject to the highest minimum and lowest rate provided for one car. This rule was not applied to shipments from Indianapolis, on which less-than-carload rates were charged on part carloads in excess of full carloads. Defendants contended that the use of the so-called "two-for-one" rule should not be extended, since it afforded opportunity for shippers to manipulate the rate and thus obtain a discrimination over other shippers. In shipments to Kansas and Texas points, Chicago received rates constructed on a differential basis, while from Indianapolis the through rates were the combined locals on Mississippi River crossings, resulting in higher aggregate rates from Indianapolis than from Chicago. In shipments to Arkansas, Indianapolis received in general the same rates accorded Chicago, but there were certain exceptions to this rule. In shipments to Louisiana points, Indianapolis was considerably nearer than Cincinnati and Chicago. It appeared that Indianapolis, as a general rule, took the same rates as Cincinnati to many Louisiana points.

Held, (Clements, C.), (a) that the "two-for-one" rule as at present applied was improper, since it gave rise to manipulation on the part of shippers, and it should be altered so as to provide a proper minimum specifically designating the various articles, so that the cars could be loaded in every case with the amount of freight on which the shipper was compelled to pay charges;

(b) that with a rule like that suggested in force, a shipper attempting to secure, by the manipulation of the "two-for-one" rule,

the application of a rate lower than that to which he was properly entitled, would violate section 10 of the Act;

(c) that the rule in force should be applied to Indianapolis as well as to Chicago;

(d) that on shipments to Oklahoma points the differentials in favor of Chicago should be reduced to figures named;

(e) that on shipments to Arkansas and Louisiana points, the rates from Indianapolis should be the same as those from Cincinnati.

Order accordingly.

928.—Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. Ry. Co. et al. 16 I. C. C. Rep. 276. (May 3, 1909.)

Complaint of unreasonable class and commodity rates from Indianapolis to Wisconsin, Minnesota and Michigan points; of preference of Cincinnati and surrounding points over Indianapolis by the application of differentials to shipments from the prior points; of preference of St. Louis over Indianapolis on shipments to the above territory; and of preference of St. Louis over Indianapolis in the application of class rates to Indianapolis while lower commodity rates were exacted from St. Louis.

The first feature of the complaint was satisfied while the hearing was pending. It appeared that although St. Louis was somewhat nearer to the destinations in question than Indianapolis, shipments therefrom were subject to competition by way of the Mississippi River which really controlled the rate situation. It appeared, however, that although class rates from Indianapolis were approximately 30% in excess of those from St. Louis, on many commodities the disparity between the rates from these respective points of origin was very much greater.

Held, (Clements, C.), (a) that in view of the different circumstance, the disparity in class rates was not unreasonable or unduly preferential to St. Louis;

(b) that the commodity rates in question were unreasonable and should be reduced to figures approximating the difference in class rates.

Case retained for voluntary action by the carriers.

929.—Kaye & Carter Lumber Co. v. Minnesota & International Ry. Co. et al. 16 I. C. C. Rep. 285. (May 10, 1909.)

Complaint of unreasonable charge on cedar poles from Hines, Minn., to Clearfield, Ia., and demand for reparation.

The complainant requested a 33-foot car for his shipments. The car furnished was 35 feet over all but 33 feet 6 inches inside measurement. On cars under 34 feet the minimum was 24,000 lbs., while for those of a greater size, it was 30,000 lbs. The charges in this case were exacted on the 30,000 lb. basis. The charges were paid

October 18, 1906, formal complaint filed January 19, 1909, but the claim was informally presented September 24, 1908.

Held, (Harlan, C.), (a) that the informal presentation of the case stopped the running of the statute;

(b) that under the tariffs in force at the time, the inside measurement of the car should have been taken and the charges assessed on the basis of cars under 34 feet;

(c) that "the obligation to carry merchandise of shippers on the basis of the published rates and minimum weights and to use whatever cars were available for that purpose irrespective of the actual size of such cars, ought to have been covered by the published tariffs" and observed in the case in question;

(d) that "a carload rate and a minimum weight for a car of definite dimensions when lawfully published in the tariffs of a carrier constitute an open offer to the shipping public to move their merchandise on those terms; and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who orders a car of a capacity, length, or dimension specified in its tariffs, simply because it is not provided with cars of the dimensions ordered."

Reparation awarded accordingly.

930.—American Beet Sugar Co. v. Chicago, R. I. & P. Ry. Co. et al.
16 I. C. C. Rep. 288. (May 10, 1909.)

Complaint of unreasonable rate on beet sugar from Las Animas, Col., to Romero, Tex., and demand for reparation.

The rate exacted was 97c. per 100 lbs., the sum of the local rates. There was no through rate in effect, but there was a through rate of 49c. from a more distant point on the same line and the 49c. rate was subsequently established from Las Animas.

Held, (Harlan, C.), that the rate exacted was unreasonable to the extent that it exceeded 49c. and that reparation should be awarded accordingly.

931.—Hanna Coal Co. v. Northern Pacific Ry. Co. et al. 16 I. C. C. Rep. 289. (May 10, 1909.)

Complaint of unreasonable charge on coal from Superior, Wis., to North and South Dakota points.

The complainant had ordered a car of capacity of 40,000 lbs. A 60,000 lb. car was furnished and freight was exacted of him on the basis of the minimum of the latter capacity car.

Held, (Harlan, C.), that in accordance with the previous decisions of the Commission reparation should be awarded on the basis of the charge on the capacity car ordered.

932.—Newark Machine Co. v. Pittsburgh, C., C. & St. L. Ry. Co.
et al. 16 I. C. C. Rep. 291. (May 10, 1909.)

Complaint of unreasonable rate on clover hullers from Newark, O., to Baltimore, Md., for export.

At the time of the shipment in question there was a commodity rate to Baltimore for export of 15½c. per 100 lbs. with a 30,000 lb. minimum. There was no commodity rate for domestic use, but the class rate for domestic use was 19c. per 100 lbs. with a 20,000 lb. minimum for a 36-foot car, and a higher proportionate minimum on larger cars. The cars in question contained about 20,000 lbs. and as the freight was calculated on a 30,000 lb. minimum, the charges were higher than would have been exacted on the basis of the domestic rate. The basis of the complaint was that it was unreasonable to exact more for export shipments than for domestic use, and the defendants admitted the soundness of this principle.

Held, (Harlan, C.), that the rate charged was unreasonable in so far as it exceeded that on domestic shipments and reparation should be awarded accordingly, but no order would be entered fixing the rate for the future.

933.—*Allen & Co. v. Chicago, M. & St. P. Ry. Co.* 16 I. C. C. Rep. 293. (May 11, 1909.)

Complaint of unreasonable rate on groceries from St. Paul, Minn., to Lemmon, S. Dak., and demand for reparation.

The rates applicable to these shipments were the sum of the local rates on the Missouri River. Subsequently defendant established through rates considerably less than the sum of the locals; and defendant admitted the reasonableness of the latter, but denied the jurisdiction of the Commission to award damages.

Held, (Clements, C.), that where the Commission found a rate unreasonable it might award reparation to the amount of the difference between the rate charged and what was found to be a reasonable rate, notwithstanding the former was a rate duly established by the carrier for the time being.

Reparation awarded accordingly.

934.—*Bluff City Oil Co. v. St. Louis, I. M. & S. Ry. Co.* 16 I. C. C. Rep. 296. (May 11, 1909.)

Complaint of unreasonable rate on cotton seed from Kilbourne, La., to Pine Bluff, Ark., and demand for reparation.

At the time of the shipment in question there was no commodity rate in force between these points, and the class rate of 40c. per 100 lbs. was, therefore, exacted. Thereafter the defendant established a commodity rate of 12c. per 100 lbs. At the hearing complainant asked leave to amend its petition to include another car not specified in the original complaint on which no freight ever had been paid, the carrier demanding the 40c. rate and the shipper contending that the 12c. rate only should be paid. The parties requested that defendant be permitted to accept a settlement on the basis of the 12c. per 100 lbs. for the last shipment.

Held, (Clements, C.), (a) that the rate exacted on the first shipment was unreasonable to the extent that it exceeded 12c.;

(b) that as no amendment to the complaint covering the second shipment had been filed, the matter was not before the Commission in such manner that it could make an order in respect thereto.

Order for reparation on the first shipment in accordance with the opinion.

935.—Goddard Co. v. Cleveland, C., C. & St. L. Ry. Co. et al. 16
I. C. C. Rep. 298. (May 11, 1909.)

Complaint of unreasonable rate on metallic cartridges and loaded paper shells in less-than-carloads from Kings Mills, O., to Muncie, Ind., and demand for reparation.

The tariff rate exacted was 33c. per 100 lbs. which defendants admitted to have been a typographical error for 23c., the rate subsequently established.

Held, (Clements, C.), that reparation would be awarded accordingly.

936-A.—In re Through Passenger Routes via Portland, Ore. 16
I. C. C. Rep. 300. (May 4, 1909.)

Investigation by the Commission, of its own motion, of the desirability of through routes from eastern points to Seattle and other northwestern points via Portland, Ore.

The Northern Pacific Railway Company runs from St. Paul to Tacoma and it also operates a line from Seattle through Tacoma to Portland. Numerous railway lines lead from Chicago to St. Paul. Union Pacific lines extend from Omaha to Portland and various other lines run from Chicago to Omaha. A passenger from Chicago to Tacoma could, therefore, proceed either via Omaha and Portland, in which case the Northern Pacific would secure the haul only from Portland to Tacoma, or via St. Paul direct over the line of the Northern Pacific to Tacoma. In order to direct traffic over its own rails, the Northern Pacific refused to join in a through route and rate via Portland, and passengers going by the Union Pacific via Portland were thus compelled to recheck their baggage from Portland and buy a local ticket, resulting in a great deal of inconvenience. It appeared that there was an average of about 22 passengers a day who went over the route via Portland and that the refusal by the Northern Pacific to join in a through route did not divert many passengers to its line, but merely caused inconvenience to those who preferred to go by way of Omaha and Portland. The Union Pacific named a through rate to Tacoma and absorbed the local charge on the Northern Pacific. The distance and running time via the Northern Pacific line were somewhat less than by the Union Pacific. The accommodations were also as good, but at certain times of the year the northern line was more interrupted by snow blockades and the scenery by the southern was of great interest.

Held, (Prouty, C.), (a) that the act empowered the Commission to establish a through route and joint rate provided no reasonable or satisfactory through route already existed;

(b) that the words "reasonable or satisfactory" were equivalent to "reasonably satisfactory" and the dissatisfaction of the passenger must, therefore, spring from some reason and not be the product of a mere whim;

(c) that there was a distinction between passenger and freight traffic as regards what was a reasonable through route, since in the former was present a personal element which did not exist in the case of property;

(d) that if the existing route was unsatisfactory to any considerable portion of the public it was not "reasonably satisfactory;"

(e) that although the mere whim or caprice of an occasional passenger should not govern, yet the element of personal preference by a considerable portion of the traveling public properly entered into the determination of what was a reasonable or satisfactory route;

(f) that the desire by passengers to behold what was attractive in nature and to use the southern route was a reasonable one and the northern route of the Northern Pacific was not within the contemplation of the statute, as to such travelers, a reasonable or satisfactory through route;

(g) that although the right of the railroad to control its traffic by making an arrangement for through routes and joint rates for the handling of passengers and freight business is a thing of value to the railway, which should be protected in so far as it can be without infringing upon the right of the public, yet railroads are public servants whose first duty is to accord to the public proper facilities;

(h) that the public interest required that the Portland gateway be opened, but the terms under which the carriers should divide the through rate among themselves would not be fixed in this proceeding;

(i) that the local fare of the Northern Pacific from Portland was not of necessity the measure of its division;

(j) that a through joint rate be established via Portland, the same as that in effect between the same points via the Northern Pacific and its present connections, to be maintained for two years.

Order accordingly.

Knapp, Ch., with whom concurred Clark, C., dissented on the ground (a) that the terms "reasonable or satisfactory" referred only to the character of the service between the two points in question and the incidental desire of the passenger to stop at intermediate points or to travel by a variety of routes could not properly be considered; (b) that except as the regulating statute might prevent, the

carriers were at liberty to take such measures as might properly secure and maintain traffic on their own lines, and it was clearly inequitable to deprive the Northern Pacific of traffic for the accommodation of which it had expended millions for terminal facilities, and turn it over to another carrier which had not seen fit to provide such terminals.

936-B.—Interstate Commerce Commission v. Northern Pacific Ry. Co. 216 U. S. 538. Appeal from C. C. D. Minn. (March 7, 1910.)

A preliminary injunction had been granted by four circuit judges on the ground that the Commission had exceeded its powers. The case was brought to the supreme court by appeal.

Held, (Holmes, J.), (a) that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and the existence of such a route might be inquired into by the courts;

(b) that without deciding how far the courts should go in dealing with the propriety of an administrative order, it was clear in the present case that the Commission could not and would not have made their order but for a view of the law which this court was unable to accept;

(c) that in complex and delicate cases, great weight should be attached to the judgment of the Commission;

(d) that the personal preference of travelers to go by the southern way or their desire to behold natural beauties, although reasons for desiring a second through route, were not reasons warranting the declaration that no reasonable or satisfactory through route already existed;

(e) that the condition of the statute was not to be trifled with and it could not be said there was no reasonable or satisfactory through route because the public preferred two.

Decree affirmed.

937.—Stone-Ordean-Wells Co. v. Northern Pacific Ry. Co. et al. 16 I. C. C. Rep. 313. (May 10, 1909.)

Complaint of unreasonable rate on two carloads of dried fruit from Fresno, Cal., to Bozeman and Billings, Mont., and demand for reparation.

The rate collected was a combination rate on Helena of \$1.32 in the one case and a combination on Lathrop of \$1.37 in the other case. At the time there was in effect a joint through rate of \$1.10 from more distant points, and, after the shipments in question, the latter was established as applicable to Fresno.

Held, (Harlan, C.), that the rate exacted was unreasonable to the extent that it exceeded \$1.10 and reparation should be awarded accordingly.

See also 1167.

938.—New Albany Box & Basket Co. v. Illinois Central R. Co.
16 I. C. C. Rep. 315. (April 13, 1909.)

Complaint of unreasonable rate on logs from Dyersburg and neighboring points in Tennessee to Louisville, Ky., and demand for reparation.

Before the shipments in question, complainant asked defendant for the rates applicable and was quoted rates of 8c. and 8½c. The shipments were made during the years 1906, 1907 and 1908. In a tariff schedule issued December, 1903, defendant had published a rate of 12c. between the points in question. On June 1, 1904, another tariff had been issued without any reference to or cancellation of the former, naming a 13c. rate, and in December, 1904, a supplement changed this to 10c. Still other tariffs were issued in 1905, further confusing the rate, and the conflict in the tariffs continued until April, 1908, when the single rate of 8½c. was definitely established.

Held, (Harlan, C.), (a) that a rate lawfully published continued to be the lawful rate until lawfully cancelled, and a subsequent tariff naming other rates without cancelling the previous rates could not carry the new rates into lawful effect;

(b) that "the silence of a subsequent tariff with respect to rates lawfully in effect can not be accepted as a lawful cancellation of the previous rates;"

(c) that "the law and the requirements of the Commission provide a method by which existing rates may be cancelled and other rates may be put in effect, and these requirements must be fulfilled in order to give legal effect to a new rate intended to take the place of an existing rate;"

(d) that the 12c. rate had never been cancelled and was properly applicable to the shipments in question;

(e) that the rate in question should not have exceeded 8c. and 8½c. and reparation should be awarded on that basis.

Reparation awarded accordingly.

940.—Gilchrist v. Lake Erie & Western R. Co. et al. 16 I. C. C. Rep. 318. (May 10, 1909.)

Complaint of unreasonable rate on oil-well supplies and pipe from Fishers, Ind., to Bartlesville, Okla., and demand for reparation.

The rate charged was a through rate of 74c. which was in excess of the combination rate on St. Louis of 58½c.

Held, (Harlan, C.), that in the absence of justification by the defendants of the rate in question, it was unreasonable in so far as it exceeded the combination of the local rates, and reparation should be awarded accordingly.

941.—American Agricultural Chemical Co. v. Erie R. Co. et al.
16 I. C. C. Rep. 320. (May 10, 1909.)

Complaint of unreasonable rate on imported iron pyrites, in carloads, from New York harbor points to Linndale and Cleveland, O., and demand for reparation.

On the shipments to Linndale the rate exacted was \$3.23 and on those to Cleveland, \$3.02 per ton. These shipments were made in June and July, 1907. During the pendency of the decision by the Commission in *Detroit Chemical Works v. Northern Central Ry. Co. et al.* (620) which involved the rates on imported iron pyrites from New York to Baltimore and Detroit, defendants had reduced the New York rate to \$2.81 per ton and made proportionate reductions to other points including Cleveland, lowering the latter rate to \$2.56. Linndale was a suburb and within the switching limits of Cleveland. Defendants admitted that the rates exacted were unreasonable in so far as they exceeded \$2.56 and agreed to award reparation on that basis, but asked that the order for the maintenance of the \$2.56 rate should run no longer than until January 10, 1910, the date on which the orders in *Detroit Chemical Works v. Northern Central Ry. Co. et al.*, *supra*, fixing the rate to Detroit, would expire.

Held, (Harlan, C.), that the \$2.56 rate was reasonable and reparation should be awarded accordingly, but the Commission would not order the maintenance of this rate beyond January 10, 1910.

942.—Chicago Lumber & Coal Co. et al. v. Tioga S. E. Ry. Co. et al.
16 I. C. C. Rep. 323, 335. (May 4, 1909.)

Complaint of unreasonable rate on yellow pine lumber from Arkansas and northern Louisiana points to Central Freight Association Territory.

Prior to October, 1903, rates from the yellow pine producing region west of the Mississippi had been by no means uniform, in some cases the rate being less than 16c., and in some cases greater. In October, 1903, by a concert of action of all the carriers serving the territory, a blanket rate of 16c. to Cairo, Ill., and 18c. to St. Louis, Mo., was put in effect. This rate resulted in an increase of 2c. from points in Arkansas and northern Louisiana on some of the lines in question, but involved a reduction for other points and no change for still others. Complainant contended that the principle on which the Commission had condemned the illegality of the advance of 2c. per 100 lbs., involved in *Central Yellow Pine Assn. v. Illinois Central Ry. Co.* (369) and *Tift v. Southern Ry.* (319 and 370) applied to the advance in question. The real purpose of the complaint was to secure for mills west of the Mississippi the same rates as allowed to those east of the river. It appeared, however, that west of the river the volume of the traffic was considerably less and the operating expenses greater, resulting in substantial dissimilarity in conditions. Different carriers served shippers from the east and west banks.

Held, (Clements, C.), (a) that in fixing relative rates "absolute and demonstrable equality in all respects is not attainable. Reasonable approximation is the most that can be expected ordinarily;"

(b) that in view of the dissimilar conditions east and west of the river, a decision in the one case was not controlling in the other;

(c) that although it was to the carrier's interest to adjust their rates so as to observe market competition, it was not the Commission's province to compel them to do so;

(d) that as regards the charge of discrimination because of higher rates west of the river than east thereof, it was apparent that a carrier could not discriminate, within the meaning of the statute, because it did not afford as favorable rates as other carriers serving a different territory, even though the products carried by each were brought to the same market. "The law does not deal in these matters with all carriers collectively as a single unit or system, but its commands are directed to each, with respect to the service which it is required to perform;"

(e) that the rates in question were not shown to be unreasonable *per se*;

(f) that although the fact that the rates were finally fixed by concert of action was to be borne in mind in passing on their reasonableness, it did not of necessity establish their unreasonableness.

Complaint dismissed.

943.—Keystone Coal Co. v. Illinois Central R. Co. et al. 16 I. C. C. Rep. 336. (May 4, 1909.)

Claim for reparation based on the same facts as appeared in *Chicago Lumber & Coal Co. et al v. Tioga Southeastern Ry. Co. et al.* (942), except that the claim was made as regards shipments from points both east and west of the Mississippi.

Held, (Clements, C.), that for reasons stated in the above case the proceeding would be dismissed as regards shipments west of the river, but retained for further proof as to shipments from points east thereof.

944.—Imperial Colliery Co. v. Chesapeake & Ohio Ry. Co., Powhatan Coal & Coke Co. v. Norfolk & Western Ry. Co. 171 Fed. 589. C. C. S. D. W. Va. (May 27, 1909.)

Motion to dissolve temporary restraining orders issued in above to enjoin the defendants from filing and enforcing interstate rates alleged to be unreasonable.

The foundation of the jurisdiction, as appeared from the face of the bill, was that a federal question was involved and not diversity of citizenship alone. The defendant was not an inhabitant of the district in which the suit was brought, but a citizen of Virginia and an inhabitant of one of the districts thereof.

Held, (Keller, D. J.), (a) that in suits under the act where no

special provision was made as to the jurisdiction in which they should be brought, the provisions of the general statutes governed;

(b) that the present suit, being one founded on a federal question, could be brought only in the state in which the defendant was incorporated and in the district of which it was an inhabitant, unless such provision was waived by the defendant;

(c) that as the present motion was made under a special appearance by defendants and no general appearance had been entered, the court had no jurisdiction and the preliminary restraining order must be dissolved and the bills dismissed without prejudice, for lack of jurisdiction over the persons of the defendants.

Bills dismissed.

945-A.—Columbus Iron & Steel Co. v. Kanawha & M. Ry. Co. 171 Fed. 713. C. C. S. D. W. Va. (May 27, 1909.)

On motion for preliminary injunction and demurrer to bill to enjoin the promulgation and enforcement of a rate and schedule of rates which defendant proposed to file with the Commission.

The bill was tendered on April 10, 1909, and alleged that the defendant proposed to file with the Commission on April 12, 1909, rates which were unreasonable and would result in irreparable injury to complainant. The bill also alleged combination and conspiracy.

Held, (Keller, D. J.), (a) that the court did not derive any jurisdiction or power by reason of the allegation of the threatened violation of the Sherman act;

(b) that irrespective of whether or not the court had jurisdiction prior to the passage of the act to enjoin the putting into effect of unreasonable rates, the passage of the act had deprived the courts of such jurisdiction, in so much as, under the Abilene Cotton Oil Case (454), the courts would not pass on the reasonableness of the rate until the same had been first approved or disapproved by the Commission;

(c) that the omission in the act to give the Commission power to determine the reasonableness of a proposed rate did not create that power in the courts.

Preliminary restraining order dissolved, and bill dismissed for lack of jurisdiction, without prejudice.

945-B.—Columbus Iron & Steel Co. v. Kanawha & M. Ry. Co. 178 Fed. 261. C. C. A. 4th Cir. (Feb. 14, 1910.)

Appeal from decree for defendant dismissing the bill and dissolving the temporary restraining order for want of jurisdiction of the subject matter in foregoing.

Held, (Pritchard, C. J.), that in accordance with the rulings of the Supreme Court, the Circuit Courts had no jurisdiction to enjoin the putting into effect or maintenance of a rate until the reasonableness thereof had been passed upon in the first instance by the Interstate Commerce Commission, and this in spite of alleged irre-

parable injury to be suffered by complainant pending a determination of the question by the Commissioner.

Powhatan Coke & Coal Co. v. Norfolk & W. Ry. Co. (C. C. A. 4th Cir.) (Feb. 16, 1910.) 178 Fed. 266. Accord.

Tennessee Cent. R. Co. v. Southern Ry. Co. (C. C. A. 4th Cir.) (Mar. 16, 1910.) 178 Fed. 267. C. C. A. Accord.

946.—**Merriam & Holmquist v. Union Pacific R. Co.** 16 I. C. C. Rep. 337. (June 7, 1909.)

Demand for reparation by reason of undue discrimination in elevator allowances to complainants' competitors at Omaha, Neb., and Council Bluffs, Ia., and denial of the same to complainants.

The case involved the same facts considered in *Nebraska & Iowa Grain Co. et al v. Union Pacific Ry. Co.* (351-C).

Held, (Lane C.), that in accordance with the decision in the foregoing case, reparation would be awarded.

947.—**Wells-Higman Co. v. Grand Rapids & Indiana Ry. Co. et al.** 16 I. C. C. Rep. 339. (June 7, 1909.)

Complaint of unreasonable rate on baskets and fruit packages from Traverse City, Mich., to Montrose, Ia., and demand for reparation.

The rate exacted was the through rate of 30½c. per 100 lbs. At the time of the shipment, there was in effect a combination of local rates on Chicago of 19c. The defendants were willing to make reparation on the basis of the combination local rate.

Held, (Lane, C.), that reparation should be awarded accordingly.

948.—**Newton Gum Co. et al. v. Chicago, B. & Q. R. Co. et al.** 16 I. C. C. Rep. 341. (June 7, 1909.)

Complaint of overcharge and of unreasonable rate on showcases from Quincy, Ill., to San Francisco, Cal., and demand for reparation.

At the time of the shipment in question the tariffs applicable thereto provided for a rate on furniture of \$2.20, but defendant exacted a rate of \$3 in compliance with a somewhat ambiguous general tariff provision, which the history of the formation of the tariff showed to refer to the commodity in question. All the lines had interpreted the tariff as warranting the exaction of the \$3 rate.

Held, (Lane, C.), (a) that railroad officials may not be looked to as authority for the construction of their tariffs, which should be framed so clearly that their meaning will be absolutely clear to members of the shipping public for whose benefit the carriers' schedules are posted;

(b) that shippers cannot be charged with the intention of the framers or with the carriers' construction thereof or of some other tariff;

(c) that the public posting of tariffs would be largely useless if the carriers' interpretation were to be dependent upon tradition and on the arbitrary practices of a general freight office;

(d) that the \$2.20 rate was properly applicable to the shipments in question and reparation should be awarded accordingly.

949.—Trostel & Sons v. Minneapolis, St. P. & S. Ste. M. Ry. Co. et al. 16 I. C. C. Rep. 348. (June 7, 1909.)

Complaint of unreasonable charge on tan bark from Trenary, Mich., to Milwaukee, Wis., and demand for reparation.

The shipment in question was routed via a line over which a 19c. rate was in effect. By another line there was a 12c. rate in effect and six months after the shipment in question, the defendants put the 12c. rate in force over the route by which this shipment had moved.

Held, (Lane, C.), that the rate exacted was unreasonable in so far as it exceeded 12c., and reparation should be awarded accordingly.

950.—Windsor Milling & Elevator Co. v. Colorado & S. Ry. Co. et al. 16 I. C. C. Rep. 349. (June 7, 1909.)

Complaint of unreasonable rate on flour from Windsor, Col., to Eunice, La., and demand for reparation.

The basis of the complaint lay in the fact that by a clerical error the tariff in force at the date of the shipment omitted to apply to the shipping points in question a rate in effect from more distant points, resulting in the exaction of a combination charge.

Held, (Lane, C.), that reparation should be awarded on the basis of the rates in force from the more distant point.

951.—Du Pont De Nemours Powder Co. v. New York, N. H. & H. R. Co. et al. 16 I. C. C. Rep. 351. (June 7, 1909.)

Complaint of unreasonable rate on safety fuse from Avon, Conn., to Pleasant Prairie, Wis., and demand for reparation.

The rate exacted was 69c. Subsequently there was put in force a rate of 44c. which the defendants admitted to be reasonable. The tariffs providing the 69c. rate were inaccurate and the carriers admitted that they did not provide for the rate intended.

Held, (Clark, C.), that reparation should be awarded accordingly.

952.—Pepperell Mfg. Co. v. Texas Southern Ry. Co. et al. 16 I. C. C. Rep. 353. (June 7, 1909.)

Complaint of unreasonable rate on cotton from Marshall, Tex., to Biddeford, Me., and demand for reparation.

At the time of the shipment, the class rate in effect was \$1.37 per 100 lbs. from Marshall to East St. Louis, as part of a through rate to Biddeford. The rate from East St. Louis was 35c., and the latter was not complained of. The agent of the initial carrier had agreed to protect a combination rate of 95c. per 100 lbs., and subsequently the lat-

ter rate had been established via the Gulf ports. Defendants appeared willing to protect the 95c. rate.

Held, (Clark, C.), that the \$1.37 part of the through rate in question to East St. Louis was unreasonable to the extent that it exceeded 60c. and the complainant was entitled to recover from the carriers operating as far as East St. Louis reparation on that basis, but as to the other defendants, the complaint would be dismissed, no order being entered as to the rates for the future.

953.—Snook & Janes v. Atchison, T. & S. F. Ry. Co. et al. 16 I. C. C. Rep. 356. (June 7, 1909.)

Complaint of unreasonable rate on fence posts from Asher, Okla., via Amarillo, Tex., to St. Vrain, N. M., and demand for reparation.

The rate charged was a combination rate of 52c. on Amarillo. At the time of the shipment there was no joint through rate, but since that date a joint through rate of 16c. had been established, which the defendants admitted was reasonable.

Held, (Clark, C.), that 16c. was a reasonable joint through rate for the future and reparation should be awarded on that basis.

954.—Scully Steel & Iron Co. v. Lake Shore & M. S. Ry. Co. et al. 16 I. C. C. Rep. 358. (June 8, 1909.)

Complaint of unreasonable rate on steel from Buffalo, N. Y., to Watertown, Wis., and demand for reparation.

The through rate charged was 30c. per 100 lbs. At the time of the shipment there was in force a combination rate on Chicago of 21½c., which, since the date of the shipment, had been increased to 23c.

Held, (Knapp, Ch.), that reparation should be awarded on the basis of the 21½c. rate, no order being entered as to the rate to be charged in the future.

955.—Hutchinson-McCandlish Co. v. Baltimore & O. R. Co. et al. 16 I. C. C. Rep. 360. (June 8, 1909.)

Complaint of unreasonable exaction of demurrage charges on coal from the Fairmont district in West Virginia to St. George, Staten Island, N. Y.

In accordance with a rule published in defendants' tariffs, where coal was shipped into St. George, demurrage ceased running as soon as barges were placed alongside the tracks for unloading the coal, even though the coal was not in fact unloaded at once. The barges to be used in the shipments in question were the property of the New York, New Haven & Hartford Railroad and defendants had no way of securing them, this being the plaintiff's business. During February, 1908, on account of the excessive cold, the coal could not be readily unloaded, as it froze into the cars and complainant therefore made no attempt to get barges from the New York, New Haven & Hartford Ry. Co. Complainant's contention was that it was un-

reasonable to charge him demurrage on the cars which were left standing during this cold snap.

Held, (Knapp, Ch.), (a) that the assessment of the demurrage charges in question was reasonable;

(b) that complainant might have avoided the demurrage charges in question either by limiting their shipments during severe weather or by securing boats sufficient to match the number of cars which had reached St. George.

Complaint dismissed.

956.—**Thomas v. Chicago, M. & St. P. Ry. Co. et al.** 16 I. C. C. Rep. 364. (June 8, 1909.)

Complaint of unreasonable rate on potatoes in carloads from Pound, Wausaukee, and Beaver, Wis., to Painesdale, Mich., and demand for reparation.

The three points in question were intermediate between Green Bay, Wis., and Painesdale. Prior to October, 1908, defendants had in force a joint tariff applying a 15c. rate from Green Bay to Painesdale, with a long and short haul provision. In October, 1908, the latter provision was cancelled and it was not until November, 1908, that a supplement was issued making the 15c. rate applicable specifically from the three points named. During the interval the rate applicable was 21c., which defendant admitted was unreasonable.

Held, (Knapp, Ch.), that reparation should be awarded on the basis of the 15c. rate.

957.—**Stock Yards Cotton & Linseed Meal Co. v. Chicago, M. & St. P. Ry. Co. et al.** 16 I. C. C. Rep. 366. (June 8, 1909.)

Complaint of unreasonable rate on oil meal from Minneapolis, Minn., to Milo, Mo.

The rate exacted was the through class rate of 33½c. At the same time there was in effect a combination rate on Kansas City of 18c. Complainant had attempted to secure the application of the combination of the local rates by billing the freight to Kansas City and requesting the railroad agent there to reship it for him.

Held, (Knapp, Ch.), (a) that a shipper could not defeat the application of a joint through rate by constituting the carrier its agent to collect charges up to the junction point and reship the traffic to final destination;

(b) that the rate exacted was unreasonable to the extent that it exceeded the combined locals.

Order for reparation accordingly.

958.—**Ottumwa Pickle Co. v. Chicago, M. & St. P. Ry. Co.** 16 I. C. C. Rep. 368. (June 8, 1909.)

Complaint of unreasonable rate on pickles from Ottumwa, Ia., to Kansas City, Mo., and demand for reparation.

The rate exacted was a class rate of 22c. per 100 lbs. At the same

time there was in effect over a competing line a commodity rate of 14½c., and defendant's agent solicited the shipment on the assumption that his road had published the same rate. Defendant admitted that the rate exacted was unreasonable.

Held, (Knapp, Ch.), that reparation would be awarded on the basis of the 14½c. rate.

959.—Northern Coal & Coke Co. v. Colorado & Southern Ry. Co. et al. 16 I. C. C. Rep. 369. (June 8, 1909.)

Petition for the establishment of through routes with joint rates from Louisville, Col., to points on the Chicago, Rock Island & Pacific Railway in Kansas, Nebraska, Missouri, Iowa and Oklahoma.

The complainant operated coal mines at Louisville, a point on the Colorado & Southern Railway 20 miles northwest of Denver, and came into competition with miners at Roswell, Col., a local point on the Rock Island road four miles northeast of Colorado Springs. In order to stimulate the coal business at Roswell, the Rock Island road applied the Denver rate from Roswell. The local rate of the Colorado & Southern to Denver was 80c. per ton, so that Roswell miners had an advantage of that amount over complainants on shipments to points on the Rock Island road. The Rock Island rates on mine-run and slack coal were lower than on lump coal. From November, 1903, to April, 1904, the Roswell rates had been the same as those from Louisville, and had been lowered by the Rock Island to stimulate traffic over its line.

Held, (Lane, C.), (a) that the 80c. local rate from Louisville to Denver, as applied to through traffic via the Rock Island, was unreasonable;

(b) that joint rates should be established from Louisville to the points in question in no case exceeding the rates from Denver and Roswell by more than 40c. per ton, such rates to be divided as the participating carriers deemed proper;

(c) that as the rates from Denver and Roswell were lower in many instances on mine-run and slack than on lump coal, the adjustment from Louisville should be made on a similar basis.

Order accordingly.

960.—Wood Butter Co. v. Cleveland, C., C. & St. L. Ry. Co. et al. 16 I. C. C. Rep. 374. (June 8, 1909.)

Complaint of unreasonable rate on butter from Wellington, O., to Evansville, Wis., and demand for reparation.

Complainants had purchased butter at Wellington and consigned it to itself at Chicago. On arrival there, the shipment was reconsigned to complainants' factory at Evansville, but without complainants' assuming personal charge of the shipment. The through rate in effect was 71c. while the sum of the local rates on Chicago was but 65.8c. Complainant demanded the difference on the ground that the shipment

had passed into its possession at Chicago. Complainant did not contend that the through rate was unreasonable.

Held, (Knapp, Ch.), (a) that although a shipper has a right to consign a shipment to a given point, pay charges on it, assume custody, take possession of the property and later reship it to another point under rates lawfully applicable to such shipment, yet under the circumstances in this case, the shipment in controversy did not pass into the possession of complainant at Chicago;

(b) that complainant having waived any charge as to the reasonableness of the through rate, complaint would be dismissed.

961.—Davies v. Illinois Central R. Co. 16 I. C. C. Rep. 376. (June 8, 1909.)

Case submitted to the Commission as to the proper charge to be exacted from complainant on shipments of cabbages from points in the states of Mississippi and Louisiana to Chicago, Ill.

It appeared that in 1899 defendant, to avoid the delay and expense of weighing each particular shipment of cabbages, after thorough investigation of the average weight of the various crates then in use in the cabbage traffic, established certain estimated weights for each of the four ordinary sizes of crates. Subsequently, however, a number of other size crates came into general use. The defendant did not promptly alter its tariffs to provide for estimated weights on the new sizes, but began the practice of weighing a few crates from each shipment and in this manner determining the total weight of the shipment by multiplying the number of crates by the average weight of each. The shipments complained of had been weighed in the latter manner.

Held, (Harlan, C.), that although the defendant was subject to severe criticism for not adjusting its tariffs promptly to meet the new conditions, yet the defendant was entitled to calculate charges on complainant's shipments on the basis of the actual weight estimated in the manner above explained.

Order accordingly.

962.—Roper Lumber-Cedar Co. v. Chicago & N. W. Ry. Co. 16 I. C. C. Rep. 382. (June 14, 1909.)

Complaint of unreasonable charge on lumber, shingles, posts and poles shipped through Menominee, Mich., and Marinette, Wis., by reason of unreasonable rule hereafter set out, and demand for reparation.

Between 1902 and October, 1907, defendant's tariffs provided for a transit privilege on lumber dressed, sawed or concentrated in transit at Menominee and Marinette. This privilege was conditioned, however, on the designation of the ultimate destination of the shipment on the shipping bill at the original point. In October, 1907, the latter condition was removed from the tariff, but prior to that

date a number of shipments were made by complainant on which local charges in and out were exacted, although the shipments were actually concentrated at the shipping points and would have been entitled to the through rate if the final destination had been shown on the billing. The condition in question had been waived by the defendant prior to 1907 in a number of instances.

Held, (Knapp, Ch.), that in view of the facts, the requirement in question was unreasonable, and resulted in excessive charges which should be refunded to complainant.

In a case between the same parties 16 I. C. C. Rep. 397, June 8, 1909, the complainant, discovering that it did not have its expense bills for the shipments in question, moved to dismiss the complaint and it was so ordered by the Commission.

963.—Blodgett Milling Co. v. Chicago, M. & St. P. Ry. Co. et al.
16 I. C. C. Rep. 384. (June 14, 1909.)

Complaint of unreasonable rate on buckwheat from Cattaraugus, N. Y., to Janesville, Wis., and demand for reparation.

The rate exacted was 27½c. while the combination of local rates on Chicago was 20c. Defendants did not seek to justify this difference.

Held, (Knapp, Ch.), that reparation should be awarded on the basis of the combination of local rates.

964-A.—Marshall & Michel Grain Co. v. St. Louis & S. F. R. Co.
et al. 16 I. C. C. Rep. 385. (June 14, 1909.)

Demand for reparation by reason of misrouting shipments of corn from various points in Missouri, Kansas and Oklahoma to Gulfport, Miss.

Held, (Clark, C.), that it appearing that the cause of action was not barred by the statute, reparation should be awarded as prayed for.

964-B.—Marshall & Michel Grain Co. v. St. Louis & S. F. R. Co.
et al. 18 I. C. C. Rep. 228. (April 11, 1910.)

Petition by defendant to modify the order issued in above.

The previous order was based on an admission by the defendant that all the eighteen cars involved in the original complaint had been misrouted by the Yazoo & Mississippi Valley. From subsequent investigations, it appeared that only six had been so misrouted; that as to a number of the others the routing followed had been inserted by the shipper after the consultation with the carrier's agent; but that as to four of the twelve there had been misrouting through fault of the St. Louis & San Francisco Railroad.

Held, (Clark, C.), that the order should be modified so as to dismiss the complaint as to the eight cars routed according to the

shipper's instructions and the order be made to run against the St. Louis & San Francisco as to the four cars misrouted by it.

Order accordingly.

965.—Cedar Hill Coal & Coke Co. et al. v. Colorado & Southern Ry. Co. et al. 16 I. C. C. Rep. 387. (June 8, 1909.)

Complaint of unreasonable rates on coal from the Walsenburg coal fields on the Colorado Southern and Denver & Rio Grande Railroads in Colorado to various points named.

The rates exacted were blanket rates covering a rather large field. Complainant relied on a comparison of the rates in question with rates on coal in other portions of the country. It appeared that complainants' mines were operated under most favorable conditions while the railroads serving them were met with considerable operating difficulties. Complainants also contended that the reconsignment rule in defendants' tariffs, providing for a 72-hour time limit, was unreasonable and asked that they be permitted to reconsign coal at any time on the payment of \$2 plus the accrued demurrage.

Held, (Clements, C.), (a) that reconsignment was not a right but a privilege and the Commission would not extend the same except to correct unjust discrimination;

(b) that the rates charged did not appear to be unreasonable.

Complaint dismissed.

966.—United States v. Adams Express Co. et al. 16 I. C. C. Rep. 394. (June 8, 1909.)

Complaint of unreasonable rate on merchandise from Washington, D. C., to Bremerton, Wash., and demand for reparation.

The rate exacted was \$11.75 per 100 lbs. which exceeded the sum of the local rates on Seattle by 40c. per 100 lbs. Defendants were willing to refund on the above basis and consented to the inclusion of two shipments made subsequent to the date of the original claim.

Held, (Clements, C.), that reparation should be awarded on all the shipments on the foregoing basis.

967.—Heilman Brewing Co. v. Chicago, M. & St. P. Ry. Co. 16 I. C. C. Rep. 396. (June 7, 1909.)

Complaint of unreasonable rate on beer from La Crosse, Wis., to Glencoe, Minn., and demand for reparation.

At the date of the shipment in question there was a 15c. rate applicable from La Crosse to Granite Falls, Minn., but it did not apply to Glencoe and intermediate points, and complainant was, therefore, called upon to pay the class rate of 19.3c. The 15c. rate was subsequently established to Glencoe.

Held, (Harlan, C.), that the rate exacted was unreasonable to the amount that it exceeded 15c. and reparation should be awarded accordingly.

968.—**Barrett Mfg. Co. v. Graham & Morton Transportation Co. et al.** 16 I. C. C. Rep. 399. (June 8, 1909.)

Demand for reparation on account of overcharge on building paper from St. Joseph, Mich., to Wausau, Wis.

The charge exacted was 21c., the sixth class rate, while at the time of the shipment in question there was a combination rate on Chicago of 14c. and also a 14c. rate via another route. Defendants admitted that the charge was excessive.

Held, (Cockrell, C.), (a) that since at the time of the shipment there was no through class rate in effect, the legal rate was the combination of the locals;

(b) that the complainant was entitled to reparation on the basis of the 14c. rate.

969.—**Empire Oil Works v. Chicago, M. & St. P. Ry. Co. et al.** 16 I. C. C. Rep. 401. (June 8, 1909.)

Complaint of unreasonable rate on gasoline from Reno, Pa., to Milton Junction, Wis., and demand for reparation.

The through rate charged was 33½c., which exceeded the combination locals on Milwaukee by 12½c. Defendants admitted the unreasonableness of the rate.

Held, (Prouty, C.), that reparation should be awarded accordingly.

970.—**Association of Union Made Garment Manufacturers of America v. Chicago & N. W. Ry. Co. et al.** 16 I. C. C. Rep. 405. (June 8, 1909.)

Complaint of unreasonable rate and classification on cheap cotton garments.

The garments in question manufactured by complainants were rated first class along with woolen cloths and garments which were considerably more valuable. It was suggested: 1st, that the specific commodities be designated by name and given a lower rate; 2d, that the rate be determined by value; 3d, that all cotton garments be placed in a lower class.

Held, (Prouty, C.), (a) that for the Commission to designate each cotton garment by name and prescribe a rate therefor, would unduly complicate the tariffs and be an unreasonable interference with the affairs of the railroad;

(b) that although value was an element to be taken into consideration in fixing the rate, yet as a practical matter rates on these goods could not be fixed according to value, as it would give rise to abuses on the part of shippers;

(c) that under the facts in the case a lower rate on all cotton goods than on woolens would not be prescribed.

Complaint dismissed.

971.—**Kurtz v. Pennsylvania Co. et al.** 16 I. C. C. Rep. 410. (June 8, 1909.)

Complaint of refusal by defendant to sell Pullman accommodations from New Castle, Pa., to New York City on presentation of combined local transportation on Pittsburgh.

Complainant bought a local ticket from New Castle to Pittsburgh and mileage from Pittsburgh to New York City. He presented this to the Pullman agent at New Castle and also to the conductor on the train but they refused to sell him through Pullman accommodations unless he presented a through ticket. The rate from Pittsburgh to New York was \$10.50 which also applied as part of the through rate. In accordance with a Pennsylvania statute, however, the local rate from New Castle to Pittsburgh was but \$1 whereas the proportion of the through rate was \$1.25. Complainant was compelled to purchase local Pullman transportation to Pittsburgh and from Pittsburgh to New York. The object of this proceeding was to determine the legality of the rule enforced by the Pennsylvania Company and the Pullman Company. The defendants also wished an expression of opinion by the Commission as to whether, when a passenger presented an interchangeable mileage ticket and a Pennsylvania mileage book entitling him to transportation from New Castle to New York, he presented such transportation for that journey as was "required by the railroad company" and such as would justify the Pullman Company in selling him through Pullman accommodations. It appeared that the defendants had published and posted a circular providing that interchangeable mileage books might not be used for through transportation for points east or west of Pittsburgh nor for the purchase of through Pullman seats.

Held, (Prouty, C.), (a) that complainant had the right to take advantage of the lower combination of locals by purchasing a local ticket to Pittsburgh and another local ticket from there to New York;

(b) that the Pullman Company was justified in refusing to sell through Pullman accommodations except on the presentation of a through railroad ticket;

(c) that under the circumstances, it would seem proper for defendants to have maintained a through rate less than the combination of the locals, but such condition could not be permanently permitted, it being the almost invariable rule of the Commission that the through charge must not exceed the combination of locals;

(d) that the presentation of a combination of mileage like that suggested would justify the sale of through Pullman accommodations;

(e) that the mere filing and posting of a circular of the character specified could not be held to be a notice to the public modifying the established tariffs or limiting the use of tickets provided for by those tariffs.

972.—**Philip v. Chicago, M. & St. P. Ry. Co. et al.** 16 I. C. C. Rep. 418. (June 7, 1909.)

Complaint of unreasonable rate on range cattle from Midland, Tex., to Kennebec, S. Dak.

At the time of the transportation in question the rate from Midland to Kennebec was made by adding to the rate to Chamberlain, S. Dak., 9½c. for the haul of 30 miles farther to Kennebec. Subsequently, the chamberlain rate was extended to Kennebec.

Held, (Harlan, C.), that under the facts of the case the rate charged was unreasonable to the amount of 9½c. per 100 lbs.

Order for reparation accordingly.

974.—**Noble v. Chicago, M. & St. P. Ry. Co. et al.** 16 I. C. C. Rep. 420. (June 21, 1909.)

Complaint of unreasonable rate on coiled elm hoops from Cardington, O., to Green Bay, Wis., and demand for reparation.

The rate charged was 24½c. There was at the same time in force a combination rate on Coster, Ill., of 20c.

Held, (Lane, C.), that the rate charged was unreasonable to the extent that it exceeded the combination rate referred to, and reparation should be awarded accordingly.

975.—**Lee-Warren Milling Co. v. Chicago, R. I. & P. Ry. Co. et al.** 16 I. C. C. Rep. 422. (June 21, 1909.)

Complaint of unreasonable rate on bran from Salina, Kas., to Hugo, Okla., and demand for reparation.

The through rate charged was 34c., whereas there was in force at the same time a combination rate on Wister, Okla., of 24½c.

Held, (Lane, C.), that the rate charged was unreasonable to the extent that it exceeded the combination rate and reparation should be awarded accordingly.

976.—**Rogers v. Oregon R. & N. Co. et al.** 16 I. C. C. Rep. 424. (June 21, 1909.)

Complaint of unreasonable rate on household goods from Spokane, Wash., to Medford, Ore.

The rate charged was \$1.11. At the same time there was in effect a through rate from Spokane to San Francisco of 71c.

Held, (Clark, C.), that in view of the water competition at San Francisco no violation of the act appeared from the facts.

Complaint dismissed.

977.—**Guthrie v. Chicago, R. I. & P. Ry. Co. et al.** 16 I. C. C. Rep. 425. (June 21, 1909.)

Complaint of unreasonable rate on household goods from El Reno, Okla., to Cabin Creek, Ark., and demand for reparation.

Complainant did not appear at the hearing.

Complaint dismissed.

978.—**Swift & Co. v. Chicago & A. R. Co.** 16 I. C. C. Rep. 426.
(June 21, 1909.)

Complaint of unreasonable regulation fixing a 15,000 lb. minimum on dairy products, poultry and fresh meats for which the carrier would furnish icing at its expense.

During the period of July 10th, 1907, to April 1st, 1908, the defendant's tariff provided for free icing of the products in question at a minimum of 15,000 lbs., but during the same period four other carriers allowed free icing at a 10,000 lb. minimum between the same points and after these shipments moved the lower minimum was established over defendant's line. This was the sole ground for the complaint.

Held, (Clark, C.), (a) that there is no requirement in the law that charges of one carrier shall always be exactly equal to those of a competing carrier;

(b) that the regulation in question did not appear unreasonable.

Complaint dismissed.

979.—**Hewitt & Connor v. Chicago & N. W. Ry. Co.** 16 I. C. C. Rep. 431. (June 21, 1909.)

Complaint of unreasonable charge on a mixed carload shipment of grain and demand for reparation.

Defendant's tariffs provided for a charge on a mixed carload of grain at the highest carload rate and minimum weight applicable to any kind, provided all but one kind be sacked. These tariffs did not provide for a separation of different kinds of grain by bulkhead until September, 1908, subsequent to the shipment in question. The grain shipped by complainant consisted of wheat and rye, the same being separated by bulkhead. Complainant was charged, however, not at the highest carload rate on the actual shipment, but on a minimum carload weight applicable to each kind of grain. Defendant admitted the unreasonableness of the charge.

Held, (Clark, C.), that reparation should be awarded accordingly.

980.—**Sunderland Brothers Co. v. Chicago & N. W. Ry. Co. et al.** 16 I. C. C. Rep. 433. (June 21, 1909.)

Complaint of unreasonable rate on rock salt from Lyons, Kas., to Lusk, Wyo., and demand for reparation.

The basis of the complaint was that for the latter part of the haul from Superior to Lusk the charge exacted was 44c., while there was a 28c. rate in effect to a point on the same line 41 miles west of Lusk. There had been in effect a long and short haul provision, but this was cancelled prior to the shipment in question and the lower rate not specifically restored until a later date, when a 35c. rate was established to Lusk with which the complainant was satisfied.

Held, (Lane, C.), that reparation should be awarded on the basis

of the 28c. rate and defendants would be ordered to maintain no higher rate to Lusk than to more distant points.

981.—Darbyshire & Evans v. El Paso & Southwestern R. Co. 16 I. C. C. Rep. 435. (June 21, 1909.)

Complaint of unreasonable rate on alfalfa hay from Deming, N. Mex., to Bisbee, Ariz., and from El Paso, Tex., to Douglas and Bisbee, Ariz., and demand for reparation.

On consideration of the facts—

Held, (Lane, C.), that the rates exacted were unreasonable in amounts specified and reparation should be awarded accordingly.

982.—Interstate Remedy Co. v. American Express Co. 16 I. C. C. Rep. 436. (June 21, 1909.)

Case submitted on agreed statement of facts.

A tariff in force over defendant's line from November 15, 1906, to May 20, 1908, provided for a return of medicines shipped C. O. D. to various consignees under certain conditions at specified rates considerably less than the one way rates. On May 20, 1908, this tariff was cancelled and the regular local charges exacted on return shipments. On the above date, however, complainant had already shipped a large amount of patent medicines which were returnable subsequently. Defendant refused to allow the rates specified in the former tariff on such return shipments. Defendant contended that the rate in the former tariff was illegal and therefore not enforceable by the complainant under any circumstances.

Held, (Lane, C.), (a) that the date of the original shipment determined the rights, privileges and obligations attaching to that shipment throughout its transportation;

(b) that the tariff was as much a part of the law as though read into the law itself, and shippers must look to the lawful tariff in effect at the time the shipment moved;

(c) that the carrier was not at liberty to plead the unlawfulness of its tariff to avoid extending the benefit thereof to the shipper;

(d) that although a shipper was put on notice of a rate by the publication of a tariff, it was not necessary for him to determine the legality of a rate regulation or practice at his peril;

(e) that the case involved nothing but an overcharge which the carrier might adjust without further reference to the Commission.

983.—Mineral Point Zinc Co. v. Wabash R. Co., et al. 16 I. C. C. Rep. 440. (June 22, 1909.)

Complaint of unreasonable rate on sulphuric acid from Howe, Ill., to Aetna, Ind., and demand for reparation.

The rate exacted was the class rate of 13c. per 100 lbs. Defendants admitted that the rate was unreasonable and should not have exceeded 10c.

Held, (Knapp, Ch.), that reparation should be awarded accordingly.

984.—*Lindsay Bros. v. Grand Rapids & Indiana Ry. Co. et al.* 16 I. C. C. Rep. 441. (June 22, 1909.)

Complaint of unreasonable rate on boilers under ten feet in length from Kalamazoo, Mich., to Blue Mounds and Mount Horeb, Wis., and demand for reparation.

The rate exacted was a through joint class rate which exceeded the combination of local rates by 12½c.

Held, (Knapp, Ch.), that in the absence of facts justifying the discrepancy, reparation should be awarded on the basis of the combination of local rates.

985.—*Swift & Co. v. Texas & P. Ry. Co. et al.* 16 I. C. C. Rep. 442. (June 22, 1909.)

Complaint of unreasonable rate on fresh meat and packing house products from Fort Worth, Tex., to Rocky Mount, N. C., and demand for reparation.

At the time of the shipment no joint rate was in force between the points in question, and defendants admitted that the rates exacted were unreasonable to amounts specified.

Held, (Knapp, Ch.), that reparation would be awarded accordingly.

986.—*Iowa Soap Co. v. Chicago, B. & Q. R. Co. et al.* 16 I. C. C. Rep. 444. (June 22, 1909.)

Complaint of defendants' refusal to carry complainants' "Pin Yon" soap in less than carloads in boxes or barrels at fourth class rates.

The defendants' tariffs provided that articles containing premiums should be charged 110% of regular rates. Complainant manufactured a kind of soap called "Pin Yon" soap and on each cake there was placed a safety pin. This, however, was not of any use commercially and was merely a trade mark or brand to designate the quality and make of soap to ignorant people.

Held, (Knapp, Ch.), (a) that the safety pin in this case was not a premium but a mere trade mark;

(b) that the tariffs reasonably construed authorized defendants to carry the soap in question at fourth class rates and that defendants would be ordered to cease charging rates in excess of that amount.

Order accordingly.

987.—*Smith Mfg. Co. v. Chicago, M. & G. Ry. Co. et al.* 16 I. C. C. Rep. 447. (June 22, 1909.)

Complaint of unreasonable rates on manure spreaders from De Kalb, Ill., to Olivia and Hutchinson, Minn., and demand for reparation.

The rates charged were through rates which exceeded the combined locals in the one case by 2.7c. and in the other case by 1.8c. No evidence was submitted by defendants justifying the higher through charges.

Held, (Knapp, Ch.), that reparation should be awarded accordingly.

988.—**Humbird Lumber Co., Ltd. v. Northern Pacific Ry. Co. et al.** 16 I. C. C. Rep. 449. (June 21, 1909.)

Complaint of unreasonable rate on cedar posts and lumber from points in Idaho to points in Wyoming.

The rates exacted were through rates which somewhat exceeded the combined locals.

Held, (Lane, C.), that reparation should be awarded accordingly.

989.—**Sunderland Bros. Co. v. Pere Marquette R. Co. et al.** 16 I. C. C. Rep. 450. (June 21, 1909.)

Complaint of unreasonable rate on soft coal from Wellston, O., to Manitowoc, Wis., destined for points beyond.

For many years prior to December 1st, 1907, defendants had maintained a rate of \$1.65 per ton on soft coal between the points in question, this being a proportional rate on business destined beyond. On that date the rate was advanced to \$1.80, but on January 22, 1908, the \$1.65 rate was restored. The traffic in question moved during the period of the advanced rate. No evidence was submitted on the part of the defendants.

Held, (Lane, C.), (a) that "where carriers vountarily maintain a rate between certain points for a long period of time the presumption is that such rate is reasonable, and where a long-established rate is raised for a short period and then voluntarily reduced to the former point the presumption is that the advanced rate is unreasonable, but this presumption may be overcome by proof to the contrary;"

(b) that in the absence of any justification by the defendants, the advance in the rate would be held to be unreasonable and reparation awarded accordingly.

990.—**Grand Junction Mining & Fuel Co. et al. v. Colorado Midland Ry. Co. et al.** 16 I. C. C. Rep. 452. (June 21, 1909.)

Complaint of unreasonable rate on coal from complainant's mines in Western Colorado to various points in Western States.

The complainants relied on a comparison with rates per ton-mile from other coal producing points. It appeared, however, that the operating conditions in reference to such rates were different from those on the railroads in question, the latter encountering considerable difficulties increasing the cost of the service. Complainants also offered evidence that one of the defendants was interested in a cer-

tain fuel company which moved it to give unfavorable rates to complainants. It appeared, also, that while the complaint was pending, considerable reductions were made in the rates in question.

Held, (Clark, C.), (a) that in view of all the facts the Commission found no justification for ordering further reductions in the rates;

(b) that "the Commission can not indulge in speculation as to the motives which actuate carriers in fixing an adjustment of freight rates as between various points of origin. We can only determine upon the facts before us and the actual conditions of which we may have knowledge whether or not the rates in question are unreasonable or unjustly discriminatory."

Complaint dismissed.

991.—California Commercial Assn. v. Wells Fargo & Co. 16 I. C. C. Rep. 458. (June 21, 1909.)

Complaint of defendant's refusal to apply aggregated charge on complainant's shipments under a rule hereinafter set out.

Defendant's tariffs provided that under certain circumstances where packages were forwarded by one company to the same point, on the same day, for the same consignee, whether from one or more shippers, the charges must be aggregated and not charged per package. Complainants were an association of shippers constructed in order to obtain lower express rates. The manager of complainants had negotiated with the railroad officials as to whether the rule in question would be applied to complainants' shipments and had been assured that it would be. Complainants, on the shipping bills in each case, designated the number but not the name of the consignee. The defendant thereupon requested that a letter be furnished stating that each different number represented but one consignee. Complainants' manager telegraphed to San Francisco asking for instructions to give such a letter and subsequently furnished the same. The defendant then further suggested that the aggregate rate would not be applied until a list be furnished of the numbers assigned to ultimate consignees. Before this was furnished a number of shipments went forward on which package rates were exacted.

Held, (Clark, C.), (a) that the question of giving bulk rates to forwarding agents was not involved in this case;

(b) that the complainant association was a proper complainant;

(c) that the terms of the tariff having been complied with by complainant, it was entitled to the aggregate rate and exaction of a higher rate was an overcharge which should be returned to complainant.

992.—Carstens Packing Co. v. Chicago, M. & St. P. Ry. Co. et al. 16 I. C. C. Rep. 469. (June 21, 1909.)

Complaint of unreasonable charge on second-hand tanner's outfit

from Milwaukee, Wis., to Tacoma, Wash., and demand for reparation.

Defendants' tariffs provided for rates on cooperage and on machinery, the former rate being \$1.35 and the latter \$1.40. The machinery rate was exacted in this case.

Held, (Lane, C.), (a) that neither of the tariff provisions in question clearly applied to this shipment;

(b) that under the circumstances a rate exceeding \$1.35 was unreasonable and reparation should be awarded accordingly.

993.—*Gaines et al. v. Seaboard Air Line Ry. et al.* 16 I. C. C. Rep. 471. (June 21, 1909.)

Complaint of discrimination against complainants, negro ministers, by inferior accommodations on passenger coaches, sleeping cars and dining cars.

The complainants were five bishops of the African M. E. Church. It appeared that the accommodations on the passenger coaches allowed negroes were even superior to those accorded whites, and that, as regards the sleeping and eating accommodations, the rules of the defendants were in no way discriminatory and any unpleasantness toward negroes was the result, not of the attitude of the carriers, but of the general position of the negro in the southern states.

Held, (Cockrell, C.), that no discrimination on the part of defendants appeared and the complaint should be dismissed.

994.—*Carlin's Sons Co. v. Baltimore & O. R. Co. et al.* 16 I. C. C. Rep. 477. (June 21, 1909.)

Complaint of unreasonable rate on machinery from Allegheny, Pa., to Victoria Mines, Ont.

The rate exacted was the through rate which exceeded the combination of the locals and to that amount was conceded unreasonable by defendants. The shipment was made in October, 1906, and a formal complaint filed December 14, 1908, but an informal complaint presented in August, 1907.

Held, (Prouty, C.), that reparation should be awarded accordingly.

995.—*Ames Brooks Co. v. Rutland R. Co. et al.* 16 I. C. C. Rep. 479. (June 21, 1909.)

Complaint of unreasonable charge on ex-lake grain for export from Ogdensburg, N. Y., to Boston, Mass.

About June 1, 1908, when a large shipment of grain was proceeding by steamer from Duluth to Ogdensburg, the complainant applied to defendants for a rate to Boston for export and was quoted a rate of 3½c. per bushel, which was to include lighterage at Ogdensburg. A tariff had been filed on May 13, effective June 15, which provided for a 3½c. rate, adding ½c. for elevating and loading. This tariff

was in effect when the shipment in question moved from Ogdensburg. There was no claim that a total 4c. rate was unreasonable.

Held, (Prouty, C.), that there being no allegation or proof that the 4c. rate was unreasonable, the tariff rate must govern, since in the enforcement of the statute requiring adherence to tariffs, the Commission had no discretion.

Complaint dismissed.

996.—**Williams Co. v. Vicksburg, Shreveport & Pacific Ry. et al.**
16 I. C. C. Rep. 482. (June 21, 1909.)

Complaint of unreasonable rates from Vicksburg, Miss., to Texas points.

It appeared that Vicksburg had the same rates to Texas common points as New Orleans did and somewhat lower rates than Memphis; also that the rate situation in question had been the result of long adjustment and that to alter it would disturb all the rates in the surrounding country.

Held, (Cockrell, C.), that the case did not present a situation justifying an alteration in the rate situation.

Complaint dismissed.

997.—**Racine-Sattley Co. v. Chicago, M. & St. P. Ry. Co. et al.**
16 I. C. C. Rep. 488. (June 23, 1909.)

Complaint of unreasonable charge on farm wagons from Racine, Wis., to Abilene, Tex., and demand for reparation.

The complainant had asked for a 50-foot box car which would have held the entire shipment of 36,200 lbs. Instead he was furnished with two 36-foot box cars. The minimum on all defendants' cars was 24,000 lbs.

Held, (Cockrell, C.), that under the facts of the case the defendants should not have charged more than the amount chargeable in case the 50-foot car had been furnished in accordance with complainant's request.

Order for reparation accordingly.

998.—**Tyler Commission Co. v. Chicago, M. & St. P. Ry. Co. et al.**
16 I. C. C. Rep. 490. (June 24, 1909.)

Complaint of unreasonable rate on baled hay from Batesville, Kan., via Kansas City to Clinton, Ia.

For the part of the journey from Kansas City to Clinton there had for years prior to June 30, 1907, been in force a rate of 12½c. This was canceled on that date, and the class rate of 17c. became effective. The 12½c. rate was restored in September, 1907, and during the interval the shipment in question was made.

Held, (Cockrell, C.), that reparation should be awarded on the basis of the 12½c. rate.

999.—**Reddick v. Michigan Central R. Co.** 16 I. C. C. Rep. 492.
(June 21, 1909.)

Complaint of unreasonable charge on mole traps from Niles, Mich., to Chicago, Ill.

Defendant's tariffs provided that traps in bundles should be carried first class and in barrels or boxes, third class. Complainant shipped mole traps in crates and was charged the first class rate.

Held, (Cockrell, C.), that a reasonable charge on traps in crates should be the same as in barrels or boxes.

Order accordingly.

1000.—**Bartling Grain Co. v. Missouri Pacific Ry. Co.** 16 I. C. C. Rep. 494. (June 21, 1909.)

Complaint of unreasonable rate on corn and wheat from Talmage and Brock, Neb., to St. Louis, Mo.

It appeared that the rate between the points in question was higher than that to more distant points on the same line.

Held, (Cockrell, C.), that no transportation reason appearing for a greater charge for the less distance, an order would be issued requiring the maintenance of the lower rates between the points in question.

1001.—**Brey, as Chairman of a Committee of the Commercial Exchange of Philadelphia v. Pennsylvania R. Co. et al.** 16 I. C. C. Rep. 497. (June 21, 1909.)

Complaint of unreasonable rule allowing but four days free time for the unloading of flour at Philadelphia and of discrimination in favor of New York by the allowance of a greater time than at Philadelphia.

It appeared that two of the railroads running to New York did not run to Philadelphia and it was in order to meet the competition of these roads that the other defendants increased the free time at New York from four days to ten days. Defendants admitted that four days was a sufficient time at either place, and justified the longer time at New York solely on the ground of competition.

Held, (Cockrell, C.), (a) that as there was competition at New York which did not exist at Philadelphia, the dissimilarity of circumstances at the two points justified the longer free time at the former city;

(b) that no opinion should be expressed as to the reasonableness of the free time at either place.

Complaint dismissed.

1003.—**Otis Elevator Co. v. Chicago Great Western Ry. Co. et al.** 16 I. C. C. Rep. 502. (June 21, 1909.)

Demand for reparation for alleged overcharge on tee rails or elevator guides from Chicago, Ill., to Portland, Ore.

One of the two shipments in question was made in June, 1906; and the other in September, 1906. The former claim was presented informally in April, 1908, but the latter not until the filing of the formal complaint in December, 1908. The freight charges in the latter case were paid in October, 1906. The tariffs in effect named a rate of \$1.40 on machinery and machines, while the supplement named a rate of 75c. on a number of articles similar to tee rails or elevator guides, but did not name them specifically. Subsequently the 75c. rate was made applicable to elevator guides. After the filing of the answers, this rate was increased to 85c. Defendants were willing to refund on the basis of the 75c. rate.

Held, (Lane, C.), (a) that the claim on account of the second shipment was barred by the statute, but the first was not;

(b) that reparation should be awarded on the basis of the 75c. rate, that being the rate which was lawfully applicable to the shipment in question.

Order accordingly.

1004.—Great Western Oil Co. v. Atchison, T. & S. F. Ry. Co.
16 I. C. C. Rep. 505. (June 24, 1909.)

Complaint of unreasonable rate and classification on empty oil barrels from points in New Mexico to El Paso, Tex., and demand for reparation.

At the time of the shipment in question, the tariffs specified fourth class rates, with a minimum of 100 lbs. at second class, no charge less than 25c. Later, the rate was changed to half fourth class with a minimum of 100 lbs. at third class, and a minimum charge of 25c. At the time of the shipment, the lower classification was in effect to numerous points on defendant's line.

Held, (Clark, C.), that the lower rate and classification was the reasonable one and should be maintained for the future and complainant was entitled to reparation accordingly.

1005.—Delray Salt Co. v. Chicago, St. P., M. & O. Ry. Co. et al.
16 I. C. C. Rep. 507. (June 21, 1909.)

Complaint of unreasonable rate on salt from Washburn, Wis., to western points on defendants' line via Minnesota Transfer, and petition for re-establishment of through routes and joint rates.

The through routes and rates in question were cancelled September 17th, 1908, at the request of the Soo Company, the Chicago, St. Paul, Minneapolis & Omaha being willing to continue them, but the Soo line desiring to abolish them in order to develop salt producing points on its own line. The defendants, however, maintained and published the separately established local charges as applicable to through transportation, and through traffic moved through Minnesota Transfer without any further handling in any way by consignor or consignee.

Held, (Cockrell, C.), (a) that the rates now in force were unreasonable to the extent that they exceeded the through routes and joint rates formerly in effect, and caused unjust discrimination against complainant:

(b) that the reason given by the Soo line for cancelling the joint rate was untenable.

Defendants given until August 2nd, 1909, to adjust their tariffs in accordance with the opinion.

1006.—**Hitchman Coal & Coke Co. v. Baltimore & O. R. Co. et al.** 16 I. C. C. Rep. 512. (June 22, 1909.)

Complaint of unreasonable rate on bituminous coal from Benwood, W. Va., to western points, as compared with rates from competing points nearby and of discrimination in favor of complainant's competitors.

Complainant's mine was situated on the east bank of the Ohio River. For a long period this river had been regarded as the boundary line in grouping rates to this region, west bound rates from the west bank being lower than from the east bank, and, conversely, east bound rates from the east bank being lower than from the west bank. The complainant was willing to surrender its grouping as to eastern rates in exchange for being included in the grouping as to western rates, since the main part of the traffic was west-bound. It appeared that the defendants were accustomed to allow lower rates to other carriers for fuel coal than those applicable to ordinary commercial shippers. It appeared that the complainant's business had been prosperous in spite of the alleged discriminatory rates.

Held, (Clark, C.), (a) that a carrier as a shipper over the lines of another carrier had no right to enjoy or be given a preferred status;

(b) that the large tonnage of other carriers did not entitle them to preferential rates;

(c) that complainant's prosperity did not show that it was entitled to no relief from the Commission;

(d) that the grouping system of making rates had contributed largely to the development of the natural resources of the country and necessarily disregarded distance to some extent;

(e) that giving full consideration to all the facts in the record, the Commission did not find that complainant was unjustly discriminated against.

Complaint dismissed.

Petition for rehearing denied, 17 I. C. C. Rep. 473, January 10, 1910.

1007.—**Hutcheson & Co. v. Central of Georgia Ry. Co.** 16 I. C. C. Rep. 523. (June 24, 1909.)

Complaint of unreasonable rate on canned peaches from Martindale, Ga., to Chattanooga, Tenn., and demand for reparation.

Complainant's shipment was the first movement of canned peaches between the points in question, and class rates were exacted. Immediately thereafter, a commodity rate was put in effect. The defendant admitted that the charge exacted was unreasonable.

Held, (Prouty, C.), that reparation should be awarded on the basis of the commodity rate subsequently established.

1008.—Wheeler Lumber, Bridge & Supply Co. v. Chicago, M. & St. P. Ry. Co. et al. 16 I. C. C. Rep. 525. (June 24, 1909.)

Complaint of overcharge on account of misrouting a shipment of posts from Wittenberg, Wis., to Whittemore, Ia.

The posts in question were delivered without routing instructions. There were in effect at the time several routes by which the shipment might have moved. The most natural one, however, was via Milwaukee. By aid of Iowa distance tariffs, the agent might have discovered several available routes at a less charge.

Held, (Prouty, C.), that the only duty on the part of defendant's agent in case of the absence of routing instructions was to select the natural, ordinary and reasonable route for the traffic, and that he was under no duty to examine all possible tariffs for lower combinations.

Complaint dismissed.

1009.—Beekman Lumber Co. v. Chicago, R. I. & P. Ry. Co. et al. 16 I. C. C. Rep. 528. (June 24, 1909.)

Complaint of unreasonable rate on ties from Fenter, Ark., to Woodruff, Mo., and demand for reparation.

The ties in question were gum timbers shipped by complainant to itself. There was in effect a through rate on lumber of 19c., but defendants declined to apply this because it was not specifically applicable to cross ties or switching ties, and demanded the rate on ties in effect to Kansas City plus the local beyond.

Held, (Prouty, C.), that the rate on ties should not exceed that contemporaneously charged on lumber, and reparation should be awarded accordingly.

1010.—Slimmer & Thomas v. Pennsylvania Co. et al. 16 I. C. C. Rep. 531. (June 24, 1909.)

Complaint of unreasonable charge on cattle from South St. Paul, Minn., to Hammond, Ind., and demand for reparation.

Complainant had tendered in the one case 85 head and in the other 225 head of cattle at St. Paul billed from St. Paul to Hammond, Ind., and ordered for the first shipment two 36 foot cars, and for the other eight 36 foot cars. Defendants for convenience furnished for the first shipment two 33 foot cars and one 36 foot car, and for the second seven 33 foot cars, two 44 foot cars, and one 36 foot car, but protected the rate and minimum on the cars ordered. At Ham-

mond the shipment were re-billed to Philadelphia, Pa., but complainant did not make demand on the Pennsylvania Company for any specific size cars, and as the freight was re-shipped in the same cars, the charges were exacted by the Pennsylvania Company on the minimum applicable to those specific cars, resulting in an alleged overcharge of \$156, for which complainant asked reparation.

Held, (Prouty, C.) that as the cattle did not move through from St. Paul to Philadelphia on a through rate and as there was no notation on the bill of lading as to the cars asked by complainant it was complainant's duty to notify the Pennsylvania of the size cars they wished and by reason of its failure to do so, the charge exacted by the defendants was proper.

Complaint dismissed.

1011.—Commercial Club of Hattiesburg v. Alabama Great Southern R. Co. et al. 16 I. C. C. Rep. 534. (June 22, 1909.)

Complaint of unreasonable rates to and from Hattiesburg, Miss., as compared with points on the Gulf and Mississippi River and as compared to rates to and from Jackson and Meridian, Miss., and of preference of the latter points over Hattiesburg, in the general adjustment of rates.

It appeared that rates to and from Hattiesburg were made by combination of through and local rates on New Orleans, Meridian, Vicksburg, Natchez and Jackson. The main contention of complainant was that as regards the rate situation, Hattiesburg should be placed on an equality with Meridian and Jackson. Hattiesburg was as important a point as either of these two, but it appeared that their preference in rates was probably the result of the competition of two carriers, each of which desired to build up one or the other of such points. The rates to Gulf Ports were influenced by water competition.

Held, (Clark, C.), that in view of all the facts it did not appear that Hattiesburg was unreasonably discriminated against by the rate adjustment in question, or that there was any unjust discrimination which the Commission could remove by any lawful effective or enforceable order.

Complaint dismissed without prejudice.

1012.—Wheeler Lumber, Bridge & Supply Co. v. Southern Pacific Co. et al. 16 I. C. C. Rep. 547. (June 21, 1909.)

Complaint of overcharge by reason of failure to furnish the size car ordered for lumber.

The evidence submitted failed to establish the allegations of the complainant.

Held, (Harlan, C.), that the complaint would be dismissed for want of proof.

1013.—Moise Bros. Co. v. Chicago, R. I. & P. Ry. Co. et al. 16 I. C. C. Rep. 550. (June 22, 1909.)

Complaint of unreasonable class and commodity rates to Santa Rosa, New Mexico, from northern points, as compared to rates from the same points to El Paso, Tex., a more distant point, and of violation of section 4 thereby.

The El Paso and Southwestern Railroad Company, which ran from Santa Rosa to El Paso, was not joined as a party defendant. El Paso was a more distant point than Santa Rosa on the same line, but was subject to highly competitive conditions not present at Santa Rosa. The complainant contended that although the rates to El Paso were forced by railroad competition, such competition was not sufficient to warrant rates for the shorter haul to Santa Rosa so much in excess of the El Paso rates. It appeared that certain of the through rates to Santa Rosa were in excess of possible combinations of local rates on other points. Shortly after the hearing, the El Paso rates were materially raised and those to Santa Rosa substantially reduced.

Held, (Harlan, C.), (a) that the Commission would not attempt to correct a violation of section 4 or an alleged preference of a longer distance point without all the carriers to the far point being parties;

(b) that the competition at El Paso appeared to justify the lower rates to that point, and such being the case, the reasonableness of rates to less distant points was the only question involved;

(c) that having satisfied the burden of justifying the lower rates to the more distant point, defendants were not thereby bound also to assume the burden of justifying the reasonableness of the rates to the shorter distant points;

(d) that the Commission would not accept a division of the through rate as a basis on which to test the reasonableness of the local one;

(e) that where through rates exceeded the sum of the locals, they should be adjusted;

(f) that the legality of the local rates of the El Paso & Southwestern was not for the Commission.

No order entered.

1014.—Sunnyside Coal Mining Co. v. Denver & Rio Grande R. Co. et al. 16 I. C. C. Rep. 558. (June 21, 1909.)

Demand for reparation on account of refusal by defendants to allow reconsignment rates on shipments of coal at Milford, Neb., returned to the consignor after refusal by the consignee.

In September, 1908, the complainant shipped a carload of lump coal from Strong, Col., consigned to its order, "notify A. A. Schultz," at Milford, Neb. The shipment arrived on September 30th, notice was given to the consignee on the morning of October 1st, the ship-

ment refused by him on the 2nd, and the consignor immediately notified of the refusal. Complainant failed to find a purchaser at Milford and reconsigned the shipment to Lincoln, Neb., on October 7th. The defendants' tariffs provided for reconsignment in the same general direction as the point to which the traffic was originally consigned, if made within 72 hours after arrival at first destination, the time allowance to be computed from the time of notice to the consignee of arrival. Here the consignor received no notice of refusal until after the expiration of the 72 hours from the time of arrival. The 72-hour limitation had since been abolished. Defendants contended that Lincoln, Neb., was not "in the same general direction" as Milford, and that the shipment from Milford to Lincoln was an independent intrastate shipment over which the Commission had no authority.

Held, (Clements, C.), (a) that in accordance with the Commission's decisions it would not make a reconsignment privilege retroactive in practical effect by ordering reparation on shipments made when it was not available;

(b) that without expressing an opinion on the question as to whether the second shipment was interstate or not, the Commission found no basis for an order against the defendants. .

1015.—Cedar Hill Coal & Coke Co. v. Colorado & Southern Ry. Co. et al. 16 I. C. C. Rep. 560. (June 21, 1909.)

Demand for reparation on account of failure to apply reconsignment charge to a shipment of coal reconsigned at Iuka, Kan., after refusal of the same by the consignee.

In 1906 complainants shipped coal from Rugby, Col., to Iuka, Kas., to its own order at the regular rate. On arrival the shipments were refused by the consignee and after being held for thirty days were reshipped on complainant's order to Preston, Kas., a point through which they had previously been hauled. The regular local rate was charged on the back haul.

Held, (Clements, C.), that without passing on the question as to whether the second shipment was interstate commerce, the Commission found no facts justifying an order against the defendants.

Complaint dismissed.

1016.—Winters Metallic Paint Co. v. Chicago, M. & St. P. Ry. Co. et al. 16 I. C. C. Rep. 562. (June 22, 1909.)

Complaint of unreasonable charge on ground iron ore from Iron Ridge, Wis., to Michigan City, Ind. and Louisville, Ky., and demand for reparation.

Subsequent to the shipments in question the defendants put in force combination rates lower than those charged complainant.

Held, (Clements, C.), that under the facts presented reparation

should be awarded on the basis of the rate subsequently established by the defendants.

1017.—**Preston v. Chesapeake & O. Ry. Co.** 16 I. C. C. Rep. 565. (June 24, 1909.)

Demand for reparation by reason of overcharge resulting from misrouting shipments of chestnut ties from Vanceburg, Ky., to Baltimore, Md.

It appeared that the shipper had ordered the routing of the shipments via the line over which they actually moved. The reasonableness of the rate was not attacked.

Held, (Clements, C.), that where the shipper directed the routing it was the duty of the carrier to follow his instructions.

Complaint dismissed.

1018.—**Link-Belt Co. v. Chicago & N. W. Ry. Co. et al.** 16 I. C. C. Rep. 566. (June 24, 1909.)

Complaint of unreasonable charge on parts of a dredging machine from Chicago, Ill., to Oroville, Cal., and demand for reparation.

The shipment in question consisted of an iron spud and a steel ladder which were parts of the dredging machine already constructed and prepared to be fastened in place in the machine. The defendants classified them as machinery at \$1.53 per 100 lbs. whereas complainant contended they should have been carried as structural steel.

Held, (Clements, C.), that the rate charged was that authorized by the tariffs and under the circumstances was not unreasonable.

Complaint dismissed.

1019.—**Hill & Webb v. Missouri, K. & T. Ry. Co. et al.** 16 I. C. C. Rep. 569. (June 24, 1909.)

Demand for reparation on account of misrouting shipments of corn in the shuck from Tupelo, Okla., to Forrest City, Ark.

The freight in question was delivered without routing instructions. The lowest combination rate applicable via the line of the road to whose agent the freight was originally delivered was 21½c. The defendant's agent, however, routed it over a line resulting in an excess charge of \$14.30. It appeared that there was in effect a through rate of 17½c. per 100 lbs. via another line.

Held, (Clements, C.), (a) that reparation should be awarded to the amount of \$14.30;

(b) that the law required each carrier to adhere to its own established rate;

(c) that it was an entirely erroneous assumption that where two or more lines with different rates between two points the shipper

may secure the application of the lowest rate by either of such lines regardless of the one which he uses.

Order accordingly.

1020.—**Crane Bros. v. Cincinnati, H. & D. Ry. Co. et al.** 16 I. C. C. Rep. 571. (June 28, 1909.)

Complaint of unreasonable charge on manure from Chicago, Ill., to Toledo, O.

The rate collected was the sixth class rate of 10c. per 100 lbs. At the same time there was in effect over another line a commodity rate of 5c. per 100 lbs., which was made effective by the defendant's line shortly afterward.

Held, (Lane, C.), that reparation should be awarded on the basis of the present rate which should be maintained for two years.

Order accordingly.

1022.—**Fort Dodge Commercial Club, of Fort Dodge, Ia. v. Illinois Central R. Co. et al.** 16 I. C. C. Rep. 572. (June 23, 1909.)

Complaint of unreasonable rates on West Virginia splint coal and on other commodities from various points to Fort Dodge, Ia., as compared with rates from the same points to Des Moines, Ia., and Albert Lea, Minn.

The rate on West Virginia splint coal from Chicago to Fort Dodge was \$1.85, while that to Des Moines was \$1.60. The complainants' cases rested largely on the per ton mile argument. It appeared that the competitive conditions at Des Moines and Albert Lea were dissimilar to those at Fort Dodge. An alteration of the rate relation would disturb the rate situation over a large area. It appeared that the low rates to Albert Lea were the result of the defendants' compliance with section 4 of the act, Albert Lea being intermediate to St. Paul, a highly competitive point.

Held, (Clark, C.), (a) that in reference to all rates and particularly to rates on coal and other staple commodities, mileage was frequently a negligible quantity;

(b) that the conditions at Des Moines and Albert Lea appeared to be essentially different from those at Fort Dodge;

(c) that the rate to Fort Dodge did not appear in itself unreasonable;

(d) that although if found unreasonable, the fact that its reduction would require a new alignment would not deter the Commission from taking proper action, in the present case such did not appear to be necessary.

Complaint dismissed.

1023.—**Alphons-Custodis Chimney Construction Co. v. Southern Ry. Co. et al.** 16 I. C. C. Rep. 584. (June 28, 1909.)

Complaint of unreasonable rate on stack chimney brick from North Birmingham, Ala., to Washington, D. C.

Part of the shipments in question were charged 29c. and part 20c. Defendants' agent had quoted an 18c. rate to complainant, conditioned on the publication of the rate by defendants, but complainant had not given notice of the shipment in time to allow proper publication. There was in effect at the time a 20c. rate on common brick, which defendants admitted should have been applied to the stack chimney brick.

Held, (Cockrell, C.), (a) that the 20c. rate should have been applied on all the shipments;

(b) that the only evidence of the unreasonableness of the 20c. rate being the facts that the carrier quoted an 18c. rate, the Commission found no reason to award reparation with regard to the shipment at 20c.

Order accordingly.

1024.—Winters Metallic Paint Co. v. Chicago, M. & St. P. Ry. Co.
et al. 16 I. C. C. Rep. 587. (June 22, 1909.)

Complaint of unreasonable rate on ground iron ore from Iron Ridge, Wis., to various points in other states, and demand for the instalment of a private side track at complainant's mills.

Under the Official Classification, pig iron was rated sixth class, minimum weight 25 gross tons, and ground iron fifth class, minimum weight, 36,000 pounds. Under the Western Classification, pig iron took Class D rates, minimum 50,000 lbs., and ground iron ore Class C rates, minimum 36,000 lbs., with certain exceptions. Complainant's main reliance was on the fact that ground iron ore, being of somewhat lower market value than pig iron, should have a lower classification. It appeared that iron ore furnished more transportation difficulties than pig iron and that the volume of traffic was very much less. Complainant also asked the Commission to order defendants to build a private side track from their main line to complainant's mills, a distance of 425 feet, over the property of the Illinois Steel Company and a public highway.

Held, (Clements, C.), (a) that while the Commission did not consider value the sole test of the reasonableness of classifications, yet ground iron ore appeared to be a low grade commodity which could not move unless accorded comparatively low rates, and was entitled to sixth class rates under Official Classification and Class D ratings under Western Classification between the points specified;

(b) that the Commission had no authority to order the construction of a private side track by a railroad company, its authority being limited to ordering a carrier to make switch connections with a private side track already constructed.

Order accordingly.

1025.—*Duncan & Co. et al. v. Nashville, C. & St. L. Ry. Co. et al.*
16 I. C. C. Rep. 590. (June 24, 1909.)

Complaint of preference of Nashville, Tenn., over Atlanta and other Georgia cities by elevator allowances and reconsignment privileges on grain at Nashville denied to complainants' cities, and by refusal to allow carload rates lower than less-than-carload.

At Nashville there had long been an allowance of $\frac{3}{4}$ c. per 100 lbs. in payment for so-called elevation. It appeared, however, that this allowance was made whenever the grain was unloaded, in the manner most convenient to the dealer. The Atlanta dealer did not receive any elevator allowance and in addition, after loading at his own expense, was required to pay certain switching charges. At Nashville, grain from Ohio and Mississippi River crossings could be reconsigned within six months to points in the southeast, on exhibition of expense bills. It appeared that although defendants had in effect rules designed to stop trade in expense bills, yet by reason of the local consumption of grain, there was always a surplus of expense bills and considerable manipulation of the same. In the southeast territory it appeared that freight was generally transported on any quantity rates, there being no carload rates lower than less-than-carload. Defendants were willing to establish a differential in favor of carload shipments, provided this might be done by raising the less-than-carload rates. The various State Commissions, however, required any quantity rates on intrastate shipments, and although a differential in favor of carload shipments had been put in effect by defendants for a certain time, it had been discontinued by reason of the requirement of the State Commissions and of the impracticability of continuing differentials on interstate traffic where such could not be legally enforced on intrastate. It appeared that the handling of less-than-carload traffic was more expensive to the carriers than where the freight proceeded in carloads.

Held, (Clements, C), (a) that the elevation allowance at Nashville was illegal and constituted an undue preference of Nashville over complainants;

(b) that on the arrival of the grain at Nashville it lost its identity and the reshipment in every respect might be regarded as a local shipment;

(c) that reshipment in such cases at the balance of the through rate was illegal and constituted an unlawful preference of Nashville over other points not allowed the privilege;

(d) that while the cost of service to the carrier was an important consideration, it could not be made the sole basis for rate making;

(e) that the Commission would not order the adoption of a system which would benefit the large dealer at the expense of the smaller one;

(f) that there being no evidence that the any-quantity rate was

unreasonable, no order would be made with reference thereto.
Order accordingly.

1026.—Alphons Custodis Chimney Construction Co. v. Vandalia R. Co. et al. 16 I. C. C. Rep. 600. (June 28, 1909.)

Complaint of unreasonable charge on stack chimney brick from Brazil, Ind., to Minnesota Transfer, Minn., and demand for reparation.

On part of the shipments in question a rate of 19c. was exacted and on part 23½c. The lawful rate in force at the time was a joint through sixth class rate of 23½c. The defendants subsequently established a commodity rate of 13c., and practically admitted that this was reasonable.

Held, (Harlan, C.), that reparation should be awarded on the basis of the 13c. rate.

Order accordingly.

1029.—Monarch Milling Co. v. Chicago, R. I. & P. Ry. Co. et al. 17 I. C. C. Rep. 1. (June 28, 1909.)

Complaint of unreasonable rate on flour from Turon, Kas., to Lake Charles, La., via Fort Worth, Tex., and demand for reparation.

The rate exacted was the fifth class rate of 70c. Later a commodity rate of 43c. was put in force by the defendants and this they admitted would have been a reasonable rate.

Held, (Clark, C.), that reparation should be awarded on the basis of the 43c. rate.

Order accordingly.

1030.—Otis Elevator Co. v. New York Central & H. R. R. Co. et al. 17 I. C. C. Rep. 3. (June 28, 1909.)

Complaint of unreasonable rate on electrical hoisting machinery and elevator controllers from Yonkers, N. Y., to San Francisco, Cal., and demand for reparation.

The elevator controllers were parts of hoisting machines with which they were shipped. The tariffs of the defendants provided a rate of \$1.40 on hoisting machinery and also provided that dynamos and motors forming an integral part of machinery might take the same rate. The defendants, however, rated the elevator controllers as electrical appliances at \$3 per 100 lbs. There was no specific provision permitting the mixing of hoisting machines with elevator controllers at the time of this shipment, but such a provision was put in effect subsequently.

Held, (Knapp, Ch.), that the \$1.40 rate should have been applied to the elevator controllers and complainant was entitled to reparation accordingly.

1031.—Carstens Packing Co. v. Southern Pacific Co. 17 I. C. C. Rep. 6. (June 28, 1909.)

Complaint of unreasonable rate on sheep from California to Tacoma, Wash., and demand for reparation.

Defendant's tariffs contained a provision allowing a rate of 170% per car on double deck cars, but providing that where the company could not furnish double deck equipment and the shipments moved in single deck cars, the rates provided for the latter would be charged. Defendant had no double deck cars and furnished the same only when such cars belonging to other railroads were on its lines. Complainant demanded a double deck car and such a car not being furnished, contended that it should have been charged the rates applicable to such a car although the shipment was in single deck cars.

Held, (Cockrell, C.), that the complainant was not entitled to reparation.

Complaint dismissed.

1032.—American Trust & Savings Bank, Trustee in Bankruptcy for the Metals Extraction & Refining Company v. Chicago, M. & St. P. Ry. Co. 17 I. C. C. Rep. 11. (June 29, 1909.)

Complaint of unreasonable rate on mill cinders from Chicago, Ill., to Omaha, Neb., and demand for reparation.

Defendant's tariff contained a provision that the rate be assessed per net ton. This was admitted to be an error for gross ton.

Held, (Lane, C.), that reparation should be awarded accordingly.

1033.—Anderson, Clayton & Co. v. St. Louis & S. F. R. Co. et al. 17 I. C. C. Rep. 12. (June 29, 1909.)

Complaint of unreasonable rate on cotton from Lawton, Okla., to Chickasha, Okla., and demand for reparation.

Complainant had shipped cotton between the above points for concentration and re-shipment to other states. While in the compress at Chickasha the cotton was destroyed by fire and complainant thereupon demanded repayment of the charges theretofore paid.

Held, (Lane, C.), that the complaint should be dismissed.

1034.—Herbert E. Havemeyer and Norris H. Mundy, Copartners Trading Under the Firm Name of W. A. Havemeyer & Co. v. Union Pacific Ry. Co. et al. 17 I. C. C. Rep. 13. (June 21, 1909.)

Complaint of unreasonable rate on sugar from Eaton, Col., to Decatur, Ill., and demand for reparation.

At the time of the shipment there was in effect no joint through rate via the route over which this shipment proceeded, and the class rate of 74½c. was therefore exacted. There was in effect

over other lines a joint through rate of 32½c., and this was subsequently established over the route in question.

Held, (Harlan, C.), that reparation should be awarded on the basis of the 32½c. rate.

1035.—Hood & Sons v. Delaware & Hudson Co. 17 I. C. C. Rep. 15. (June 23, 1909.)

Complaint of unreasonable rate and service on milk from West Pawlett, Vt., and intermediate stations, to Eagle Bridge, N. Y., destined to Boston, Mass.

Complainant was engaged in the business of buying milk at country stations and shipping the same to market. In 1904 he made a contract with the defendant for a rate per car per annum of \$4500, and this had been several times modified until after the passage of the Hepburn Act, when a flat rate had been established by the defendant, largely in excess of the original rates. While the case was pending before the Commission a new agreement was entered into between the parties and they proposed to file a tariff embodying the terms of the agreement. They desired the Commission to construe certain ambiguous provisions in the agreement. It was also a disputed point as to whether the Commission had jurisdiction of the transportation between points in the State of New York.

Held, (Clements, C.), (a) that the present rate of 16c. per can of 40 quarts was unreasonable to the extent that it exceeded 10c. per can;

(b) that the Commission had no jurisdiction over shipments originating and finally terminating within a single state, but that the stoppage of a shipment for a temporary purpose did not destroy the interstate character of the shipment;

(c) that the Commission had no authority to approve or enforce a private contract between a shipper and carrier concerning charges for transportation, nor was it bound by such agreement when reasonableness of freight charges was challenged in the mode prescribed by the Act;

(d) that the Commission would not undertake to interpret or construe an agreement or determine its legal effect or to say that a tariff should be issued in compliance therewith;

(e) that the execution of an agreement might be regarded as an admission by the carrier that the rates agreed upon were reasonable and this fact might be considered by the Commission;

(f) that where a tariff was ambiguous such an agreement might be examined and employed as a medium of explanation, but where the tariff was clear, an agreement inconsistent with it was of little value.

Order accordingly.

1036.—*Germain Co. v. New Orleans & N. E. R. Co. et al.* 17 I. C. C. Rep. 22. (June 22, 1909.)

Demand for reparation by reason of improper exaction of demurrage charges on lumber shipped from Ellisville, Miss., to Greenville, Pa.

There was in effect over the defendants' lines a through rate between the points in question. Complainant had sold the shipment to the Bessemer and Lake Erie Railroad Company and had notified the chief engineer of the latter that the shipment had been forwarded. When it reached Shenango, a junction point between the Erie Railroad and the Bessemer & Lake Erie Railroad, the agent of the latter refused to take delivery of the car on the ground that the complainant could not be found at Greenville. During the time the car was held, car services to the amount of \$31 were assessed by the Erie. The latter had also transferred the freight into one of its own cars at a cost of \$9, to prevent the further accumulation of demurrage. Although there was a through rate and route in effect between the points in question, the defendants had not agreed upon a division of this rate. The tariff did not specify any route over which the joint through rate was applicable.

Held, (Harlan, C.), (a) that since the tariff prescribing the joint through rate specified no routing, this left the rate in effect over all reasonably direct routes between the points in question over the lines of the carriers lawfully named as parties to the tariff;

(b) that "the fact that the carriers, by which the rate had been lawfully published and advertised to the shipping world as the cost of transportation between two given points over all reasonably available routes, have neglected or failed to agree upon divisions of the rate over one of the routes can not be accepted by the Commission as equivalent to a nullification of the published through rate over that route;"

(c) that the exaction of excess charges above specified was solely the fault of the Bessemer & Lake Erie in not notifying its agents of the sale of the lumber to it and in refusing to accept the same;

(d) (semble) that the Erie Railroad had no authority to assess demurrage charges on a car detained on its line because of the refusal of its connection to accept it for removal to destination.

Order for reparation accordingly.

1037.—*Munroe & Sons v. Michigan Central R. Co. et al.* 17 I. C. C. Rep. 27. (June 22, 1909.)

Complaint of illegal demurrage charge on hard-wood ashes shipped from Bay City, Mich., to Norfolk, Va., and demand for reparation.

The complainant in making the shipments in question consigned the ashes to Williamson's siding, Norfolk, Va., on Norfolk & Southern Railroad, and shipped over defendants' lines. The bill of lading named a through rate of 20c. per 100 lbs. on the shipment, but

on the arrival at Norfolk, the car was detained on the Norfolk & Western tracks until \$23 demurrage charges accumulated, by reason of the fact, as alleged by the defendants, that Williamson siding, being outside the switching district of Norfolk, was a pre-pay point and the Norfolk & Southern refused to accept the freight until the charges up to Norfolk had been paid.

Held, (Knapp, Ch.), (a) that demurrage as a general rule was assessable against a carload shipment only at the point of origin or destination or at a reconsigning or transit point;

(b) that although an intermediate carrier might by proper tariff provisions lawfully establish demurrage charges on freight held on its line because of refusal to pre-pay charges, yet a charge of this character not being the usual practice of carriers, in order to be established must be published in the tariffs in terms admitting of no doubt or ambiguity;

(c) that the tariff contained no published rule providing a demurrage charge of the character in question.

Order for reparation accordingly.

1038.—Acme Cement Plaster Co. v. Lake Shore & M. S. Ry. Co. et al. 17 I. C. C. Rep. 30. (June 24, 1909.)

Complaint of unreasonable rate on gypsum rock or wall plaster from Grand Rapids, Mich., to points in Official and Southern Classification Territory, the State of Wisconsin, and parts of Illinois in Western Classification Territory, and demand for reparation.

Complainant relied on a comparison of rates with the division of through rates in other parts of the country, and also on a comparison of rates with rates on cement. It was also contended that the defendants should so adjust the rates as to equalize natural or geographical advantages not possessed by Grand Rapids. It appeared that for a long time prior to June 1st, 1907, the Chicago-New York base rate had been 22½c., but that during the period between June 1st, 1907 and April 20, 1908, it had been raised to 25c., and reduced to 22½c. on the latter date. No evidence was offered to justify this increase. Rates from Grand Rapids to Central Freight Association Territory were 83 1-3% of sixth class. Complainant contended that a commodity rate should be established which would enable complainant to compete with shippers from Fort Dodge, Ia.

Held, (Knapp, Ch.), (a) that the comparison with rates in other parts of the country or with division of through rates furnished no reliable standard in a case like the present;

(b) that the 25c. rate in effect from June 1st, 1907, to April 20, 1908, not being explained by the defendants in any satisfactory way, should be held unreasonable and reparation awarded on shipments made while it was in effect;

(c) that as to such shipments no order for reparation could be made until the necessary proof was offered;

(d) that "this proof should consist of a verified statement from complainant's books showing the date and weight of each shipment, the route over which it moved, the date when payment was made, and the amount of the claimed overcharge;"

(e) that the exaction of a lower rate on cement did not show the unreasonableness of the rate in question, since the volume of traffic on cement was much larger and other considerations were present to justify a lower cement rate;

(f) that the Commission was disposed to encourage the making of class rates wherever practicable because of their tendency to uniformity and stability, and it was only in cases where it clearly appeared that the inclusion of a given article in a class resulted in unreasonable charges and a lower classification would not meet the demands of justice, that commodity rates would be required to be established.

Complaint dismissed.

1039.—Federal Sugar Refining Co. of Yonkers v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 40. (June 24, 1909.)

Complaint of unreasonable rate on sugar from Yonkers, N. Y., to points on defendant lines, and of undue discrimination in favor of sugar refineries within the lighterage limits in New York Harbor by defendants' lighterage regulations.

Complainant operated a sugar refinery at Yonkers, N. Y., a point on the New York side of the Hudson River about ten miles north of New York. At New York competition had forced the defendants to allow free lighterage in and out of New York and Brooklyn. At some points this lighterage was done by defendants' own boats, and at others, certain companies were hired by defendants to do the lighterage, being paid 3c. to 4 1-5c. per 100 lbs. The defendants' tariffs provided the same rate from Yonkers as from New York and allowed free lighterage, but by reason of the great congestion of defendants' terminals, a delay of some ten days resulted from a shipment in this manner, so that complainant, as a practical matter, found it cheaper to pay 3c. per 100 lbs. to lighter his sugar to the defendants' freight depots on the Jersey shore. Two of the terminal companies, paid by the defendants for lighterage within the free lighterage district, were owned by partnerships or corporations who were extensive shippers of sugar. According to the opinion of the majority of the Commission it did not appear, however, that the amounts paid to such companies exceeded the authorized cost of the service.

Held, (Knapp, Ch.), (a) that the fact that defendants furnished free lighterage to New York and Brooklyn and thus extended its line beyond its railroad terminals was not in compliance with any requirements of the act and did not require defendants to further

extend their line or to provide railroad facilities or to provide lighterage to Yonkers, a distinct community;

(b) that it was proper for defendants to secure and maintain freight depots by contract with independent concerns and to pay such concerns a reasonable amount for performing the duty of a carrier;

(c) that from the evidence it did not appear that the amounts paid the two concerns in question were unreasonable;

(d) that if the through rate from Yonkers to western points via New York was unreasonable, the proper procedure was for complainant to apply to the Commission for the establishment of a satisfactory through route;

(e) that no unjust discrimination against the complainant appeared.

Complaint dismissed without prejudice.

Clark, C., concurred on the ground that the defendants were not bound to extend their lighterage limits, but stated that unjust discrimination would exist if defendants permitted one sugar shipper within the lighterage limits to receive pay for lighterage and refused to allow the same privilege to another shipper similarly situated.

Lane, C., with whom concurred Clements and Harlan CC., dissented on the ground that from the Commission's general knowledge of the practice with regard to the transportation of sugar, and in the light of the testimony in other cases involving the same questions, it appeared that the allowances to the two companies in question were instrumentalities for producing an illegal discrimination in their favor.

1040.—Greater Des Moines Committee v. Chicago, R. I. & P. Ry. Co. et al. 17 I. C. C. Rep. 54. (June 25, 1909.)

Complaint of unreasonable proportional rates on through traffic from points east of the Indiana-Illinois State line to Des Moines, Ia., destined to points beyond, and application for joint through rates.

Held, (Lane, C.), (a) that the combination through rates in question from the specified points were unreasonable to the amounts specified, and should be reduced accordingly;

(b) that the application for joint through rates would be denied. Order accordingly.

See also 1125.

1041.—Bentley & Olmsted Co. et al. v. Lake Shore & M. S. Ry. Co. et al. 17 I. C. C. Rep. 56. (June 25, 1909.)

Petition for the establishment of joint through routes and rates on boots and shoes between Boston and Des Moines, and for the establishment of carload rates on the same commodities.

Held, (Lane C.), (a) that for the reasons suggested in the preceding cases the Commission would not establish joint rates;

(b) that since the unit of transportation of the commodities in question had for a long time been an any-quantity rate, the Commission would not order the establishment of a carload rate. Complaint dismissed.

1041.*—**Greater Des Moines Committee v. Chicago, R. I. & P. Ry.**
Co. 17 I. C. C. Rep. 57. (June 25, 1909.)

Complaint of unreasonable local rates between Chicago and Des Moines and of preference thereby to Minneapolis and St. Paul over Des Moines.

Held, (Lane, C.), that the first class rate specified was unreasonable by 8c. but that the through rates specified were reasonable.

Order accordingly.

See also 1125.

1042.—**Sondheimer Co. v. Illinois Central R. Co. et al.** 17 I. C. C. Rep. 60. (June 29, 1909.)

Complaint of undue preference of the lumber shippers at Memphis, Tenn., over those at Cairo, Ill., by allowance of re-consignment privileges at Memphis not allowed at Cairo, and of unreasonable rates through Cairo as compared to those through Memphis, and demand for reparation.

Prior to September, 1908, there had been in existence since April, 1897, at Memphis certain reconsignment privileges, duly published in the tariffs, under which a dealer was permitted to ship out from Memphis the same lumber or an equal tonnage of the same kind of lumber to northern and eastern points, on exhibition of expense bills showing shipments in from southern and southwestern points. The outgoing shipment was in accordance with the full local rate less certain maximum shrinkage, amounting to from 2c. to 4c. per 100 lbs. In September, 1908, a new tariff was issued under which lumber might be reconsigned from Memphis within 120 days of the shipment in at practically 1c. less than the local rate, the outbound rates under these conditions being called proportional rates. It appeared that the reconsignment privilege had arisen at Memphis under competitive conditions rendering its allowance necessary. Prior to September, 1908, the old rates favored Memphis in some instances by 5c. per 100 lbs. and in all cases favored Memphis considerably more than under the new tariff. There was some evidence of manipulation of expense bills at Memphis, but this point was not relied upon by the complainant. Defendants moved to dismiss the complaint because other railroads leading from Memphis were not made parties, although they had tariffs containing the same provisions as those of the Illinois Central in question.

Held, (Knapp, Ch.), (a) that although the other carriers were proper they were not necessary parties;

(b) that the lumber business being conducted at Cairo under different circumstances than at Memphis and the competition at the latter point being greater, the circumstances at the two localities were so dissimilar as to justify the present preference in rates of Memphis over Cairo;

(c) that under the former tariff, however, as compared to that at present in existence, there was undue discrimination in favor of Memphis and complainants were entitled to reparation on proof of shipments on the basis of the rates in force in September, 1908.

Case held open for proof of shipments.

1043.—Montague & Co. v. Atchison, T. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 72. (June 24, 1909.)

Complaint of unreasonable charge on furniture (wood mantels, steel bath tubs, new furniture, bedroom furniture, iron and brass beds, folding beds, mattresses and springs, chairs and chair stock and tables) in transcontinental shipments from the east to the west resulting from unreasonable carload minima.

The basis of the complaint was that in some certain instances defendants' carload minima on light and bulky articles were higher than the amount which could be loaded into a car. Complainant contended that any minimum which could not invariably be loaded with proper care on the part of the shipper was for that reason unlawful. It appeared that with regard to wood mantels and iron and brass beds the minimum fixed could not reasonably be loaded, but that with regard to the other articles, with proper care, in the majority of instances, the minimum might be loaded. Complainant also contended that a minimum should be fixed for each different size car, but this point was not discussed in the brief or in the argument.

Held, (Prouty, C.), (a) that it was not, as a practical matter, possible to establish a minimum for each kind of furniture;

(b) that the Commission would not decide a point not discussed in the brief or argument or referred to in the testimony;

(c) that the Commission would not decide the question as to the necessity for different minima on different size cars;

(d) that a minimum should be fixed at such figure as could ordinarily be loaded, but need not be so low that it might be loaded under all circumstances;

(e) that in the two instances where the minimum was higher than the possible loading capacity such minimum was unreasonable and reparation should be awarded, but as to the other cases, the complaint should be dismissed.

See also 1078 and 1080.

1044.—Beekman Lumber Co. v. Kansas City Southern Ry. Co. et al. 17 I. C. C. Rep. 86. (June 28, 1909.)

Complaint of unreasonable reconsignment rate on lumber at Fort Smith, Ark., and demand for reparation.

The defendants' tariffs provided for a reconsignment charge of \$5. Complainant shipped a carload of lumber from Deridder, La., to itself at Fort Smith, and while the car was on the way notified the defendants to make delivery of it to another party at Fort Smith. No additional expense was incurred by the defendants in making delivery except the change of the name of the consignee on the expense bill. Under Conference Ruling 72, this change of consignee was a reconsignment and defendant so held and exacted \$5 for the services.

Held, (Prouty, C.), that under the circumstances \$1 would have been a reasonable charge and reparation should be awarded accordingly.

1045.—Herbeck-Demer Co. v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 88. (June 28, 1909.)

Complaint of discrimination in the free carriage of 150 lbs. of baggage for passengers having baggage as against those with no baggage.

The complainant's salesmen usually carried about 1250 lbs. of baggage and were charged for extra baggage over 150 lbs. The object of the complaint was to abolish all free baggage and hence reduce the rate on the excess.

Held, (Prouty, C.), (a) that not every discrimination was illegal but only those which were undue;

(b) that the carrying of personal baggage of passengers without extra charge was not unlawful.

Complaint dismissed.

1046.—Memphis Freight Bureau v. Kansas City Southern Ry. Co. et al. 17 I. C. C. Rep. 90. (June 28, 1909.)

Complaint of unreasonable charge on peaches from Horatio, Ark., to Memphis, Tenn., and demand for reparation.

The third class rate of 89c. was exacted for freight and also a refrigeration charge of \$70.50 was collected. At the time of the shipment there was no commodity rate in effect and the 89c. rate was the regular third class rate. This was subsequently superseded by a commodity rate of 39c. There was no tariff authority whatever for the exaction of the refrigeration charge.

Held, (Prouty, C.), (a) that the 89c. rate was unreasonable to the amount that it exceeded 39c.

(b) that where a transportation service was rendered for which no tariff authority whatever existed at the time, and the shipper paid a sum claimed by the carrier for that service, the Commission had jurisdiction to inquire what was a reasonable charge for the

service and to order the repayment of whatever the carrier had collected over and above such reasonable charge;

(c) that the Commission could not order a repayment of the entire amount paid in such cases since its authority extended only to award damages for violation of the Act, and there was no damage in any sense of the word unless the shipper had been compelled to pay more than a reasonable rate;

(d) that \$48 would have been a reasonable charge for refrigeration and the excess should be refunded.

Order accordingly.

Cockrell, C., dissented on the ground that the entire amount exacted for refrigeration should be refunded, since the Commission had no jurisdiction to inquire what was a reasonable charge for a service performed without tariff authority and the entire \$70.50 was an overcharge.

1047.—Manahan v. Northern Pacific Ry. Co. et al. 17 I. C. C. Rep. 95. (June 22, 1909.)

Complaint of unreasonable rate on bituminous and anthracite coal from Duluth, Minn., and Superior, Wis., to St. Paul and Minneapolis, Minn., and of discrimination in favor of anthracite coal.

The rate on bituminous coal was 90c. and on anthracite \$1.25. Complainant relied on comparisons with proportions of through rates. From tables of state rates and comparison with rates in other parts of the country it did not appear that the rates complained of were out of proportion.

Held, (Knapp, Ch.), (a) that divisions of through rates were not measures of the reasonableness of local rates;

(b) that there was nothing in the record to justify a finding that the rates were unreasonable or that there was a discrimination in favor of anthracite shippers.

Complaint dismissed.

1048.—Merchants' Cotton Press & Storage Co. et al. v. Illinois Central R. Co. and Memphis Warehouse Co. et al. 17 I. C. C. Rep. 98. (June 24, 1909.)

Complaint of certain allowances to defendant, the Memphis Warehouse Co., for compressing and handling cotton as illegal and as discriminatory against complainant.

Complainants were corporations situated at Memphis and engaged in compressing cotton. Their stock was owned largely by cotton brokers and shippers. At one time the failure of consignees to remove cotton promptly from cars at the depot resulted in such congestion, under the growing business, that defendants found it to their advantage to make delivery at the warehouses and thereafter adopted this system at Memphis, having the service performed by a company to which they paid 17½c. per bale. The cotton was shipped

in this vicinity at any quantity rates, compressed or uncompressed, with the privilege on the part of the carriers of having it compressed. For this service, the regular rate was 10c. per 100 lbs., or 50c. per bale, and such was the rate paid to the complainant company. Even under the free delivery system adopted at Memphis, the congestion continued to such an extent that in 1906 the Memphis Warehouse Company was organized, after a conference between railroad and shippers. This company built a large compress and storage plant at South Memphis, two miles below the city, and near the tracks of the Illinois Central, with ample facilities for handling cotton and carrying on the business of a large cotton market. Its equipment included several compresses, about 80 compartment warehouses which were leased to cotton dealers, various loading and unloading platforms and about $6\frac{1}{2}$ miles of internal tracks connecting the compresses and warehouses with each other and with the interchange tracks of the carriers. By a belt line, the South Memphis plant could be reached from all lines entering Memphis. Eighty per cent. of the stock of the Memphis Warehouse Co. was owned by cotton brokers and shippers. It was provided that the Memphis Warehouse Co. should receive from the railroads 50c. per bale for compression and also 10c. for each unbound bale delivered to it on which the carriers earned revenue other than a shipping charge. This 10c. the defendants contended was the equivalent of the $17\frac{1}{2}$ c. paid for delivery. From the facts as stated in the dissenting opinion it would appear that certain of the Memphis shippers had delivery made at their warehouses on the railroad tracks without the defendants' incurring the $17\frac{1}{2}$ c. transfer charge. It did not appear that the Memphis Warehouse Co. was making an unreasonable profit by the receipt either of the 50c. a bale for compression or of the 10c. switching charge.

Held, (Knapp, Ch.), (a) that the charge for compression being the same as that paid to any compress company was not unreasonable or discriminatory;

(b) that the present case was really a controversy between competing compress companies;

(c) that it was not a violation of the law for the railroad to give all its compression or switching business to one company;

(d) that although neither carriers nor shippers could evade the prohibitions of the law by means of a paper organization, and although the utmost good faith in the matter of incorporation would not justify a relation which actually worked out a violation of the statute, and although the Commission had never hesitated to look through corporate forms and examine the substance of transactions, yet in the present case it did not appear that any violation of the act had been accomplished, the facts being insufficient to warrant a finding of unjust discrimination against the complaining concerns;

(e) that the allowances and compensation here in question did not appear excessive.

Complaint dismissed.

Clements, C., and Lane, C., dissented on the round that the allowance of 10c. to the Memphis Warehouse Company for switching was unlawful as a payment by the carrier to a company owned by shippers for a service which the carrier was not bound to perform.

1049.—In re Milling-in-Transit Rates. 17 I. C. C. Rep. 113. (June 28, 1909.)

Proceeding by certain shippers to induce the Commission to rescind its ruling requiring the observance of through rates in effect as of the date of the original shipments where such rates were altered prior to reshipment under a milling-in-transit privilege.

Held, (Lane, C.), (a) that in such a case the through rate in effect as of the date of the original shipment must govern and not that in effect at the second shipment;

(b) that if the second shipment was an independent one the milling-in-transit rate was improper;

(c) that if the second shipment was a part of the through shipment, the rate in effect at the date of origin must govern.

1050.—Boise Commercial Club v. Adams Express Co. et al. 17 I. C. C. Rep. 115. (June 29, 1909.)

Complaint of unreasonable express rates from New York City to Boise, Ida., and other Southern Idaho points, on packages weighing from 8 to 47 pounds, as compared to rates to Reno, Nev., and Portland, Ore.

Boise was served by the Pacific Express Company alone. Reno and Portland were served by two or more express companies. The defendants had in effect a tariff provision fixing single rates where the points of origin and destination were reached by the same company or where more than one company operated between the points of origin and destination; but where different companies operated between such points and but one company served the point of destination, double rates were exacted. This provision resulted in a higher charge to a shorter distance point in a number of cases and also in many through rates exceeding the combination of the local rates. Defendants sought to justify the charge on the ground that the practice had been in force for a number of years, and also that the transfer from one company to another resulted in additional expense which justified the higher charge. The tariff also provided a much higher rate, in some instances 172%, on packages where charges were paid at destination than where they were prepaid.

Held, (Lane, C.), (a) that no matter how long a practice had been

in effect it might be challenged, since remedial statutes such as the Interstate Commerce Law were generally caused by abuses of long standing;

(b) that the expense of the transfer of freight from one company to another did not justify the additional charge here apparent;

(c) that there could be but one lawful rate between two points and the law took no cognizance whatever of the distinction made by express companies between prepaid and collect shipments;

(d) that a carrier might waive the right to prepayment and accept a C. O. D. shipment, but if it did not collect the charges from the consignee it must look to the consignor for payment and might not exact a higher rate on collect packages than on those prepaid.

(e) that express rates in general violated many of the provisions of the act and should be reconstructed accordingly, the case being left open until October 1st for that purpose.

1051.—Turnbull Co. v. Erie R. Co. 17 I. C. C. Rep. 123. (June 24, 1909.)

Complaint of unreasonable track storage charges on oats at New York City and demand for reparation.

The defendants' tariffs allowed 48 hours free time and charged \$1 per day per car for the next two days and \$2 per car per day for each day thereafter. This was the same charge applicable to hay under a tariff issued in conformity with the Commission's order in *New York Hay Exchange v. Pennsylvania Railroad* (601). Complainant contended that the difference in the manner of handling of oats justified a lower charge.

Held, (Clements, C.), that the charges and rules complained of were not unreasonable.

Complaint dismissed.

1052.—Carstens Packing Co. v. Oregon R. & N. Co. et al. 17 I. C. C. Rep. 125. (June 22, 1909.)

Complaint of unreasonable charge on cattle from Baker City, Ore., to Tacoma, Wash., and demand for reparation.

Complainant shipped ten carloads of cattle between the points in question, routing the same via the Oregon Railroad & Navigation Company from Baker City to Wallula, Wash., and thence to Tacoma via the Northern Pacific. The published rate over this route was \$104.40 per car. At Pasco, Wash., it was found that on account of washouts the cattle could not proceed over the route ordered and they were therefore hauled back to Wallula and sent over another line, resulting in excess freight charges to the amount of \$93, and also in \$302.65 for feeding charges which complainant contended was \$152 in excess of what would have been exacted had the cattle gone

by the route ordered. Complainant also asked for an amendment to the complaint to include damages for shrinkage in weight on account of the diversion. Defendants were willing to pay the excess freight charges.

Held, (Clements, C.), (a) that the Commission had no authority to award damages for shrinkage in weight;

(b) that the complainant was entitled only to the excess freight charges.

Order accordingly.

1053.—Saginaw Board of Trade et al. v. Grand Trunk Ry. Co. et al.
17 I. C. C. Rep. 128. (June 8, 1909.)

Complaint of unreasonable rates between Atlantic Coast Territory and Saginaw and Flint and other points in the Saginaw Valley, and of preference of Detroit and Toledo under the rate adjustment.

Rates to practically all the Central Freight Association Territory were constructed under a system, originally established in about 1877, on a percentage basis. The Chicago-New York rate was taken as a unit or 100% basis, and rates to all other points divided in groups made a given per cent. higher or lower than the base rate. These percentages were constructed for the most part on short line mileage, but this varied to a certain extent by reason of competition and of changing conditions and the advent of new lines. Originally the percentage system was one intended to apply to competitive points, but thereafter many non-competitive points were added. Infractions of the long and short haul clause were also avoided wherever possible. The group rate system in this part of the country had been the subject to very little criticism on the part of shippers. Saginaw and Flint were on the 92% basis, whereas Toledo and Detroit were on the 78% basis. If traffic was routed to Saginaw through Detroit, under the strict mileage system, Saginaw would get an 84% or 82% rate, but to establish such a rate would disturb the whole system throughout the region. Detroit and Toledo also secured very low rates by reason of their location on the lake. During the past ten years, both Saginaw and Flint had prospered notably.

Held, (Harlan, C.), (a) that under the group system of rate making certain inequalities were bound to be present;

(b) that the rates to the complainant localities did not appear to be unreasonable as compared to those with other groups or zones in the same general locality.

Complaint dismissed.

1054.—Sligo Iron Store Co. v. Atchison, T. & S. F. Ry. Co. 17
I. C. C. Rep. 139. (June 28, 1909.)

Complaint of unreasonable through rate on smithing coal from Chicago, Ill., to Portales, N. Mex., and from Chicago, Ill., to Pittsburgh, Kas., and demand for reparation.

The complaint also involved the lawfulness of a distinction made by defendant between bituminous soft coal and blacksmith coal. It appeared that in order to fill an order from a customer at Portales, complainant had purchased a carload of blacksmith coal standing on the tracks at Chicago, on which the local rate from the West Virginia mine had been paid. There was in effect a specific through rate of \$9.75 per ton on blacksmith coal from Chicago to Portales; a commodity rate on coal from Chicago to Pittsburgh, Kas., of \$2.30 per ton, restricted to blacksmith coal. The only rate on bituminous coal to Pittsburgh was a class rate of \$4.40 per ton. From Pittsburgh to Portales there was a rate of \$3.85 on bituminous coal which by express terms did not apply to blacksmith coal, the only local rate on blacksmith coal being a combination rate of \$13.20 per ton. The complainant, in order to avoid the payment of the \$9.75 through rate, had the shipment billed locally from Chicago to Pittsburgh, and described, not as blacksmith coal, but as "bituminous soft coal slack." He then wrote the local agent of the Santa Fe at Pittsburgh, asking that on arrival the coal might be re-billed to Portales and enclosing check at the rate of \$3.85 per ton applicable to bituminous coal. The agent at Pittsburgh, finding that the coal was really blacksmith coal, refused to transport it except at the rate of \$13.20 per ton and this the complainant was obliged to pay. Defendant's rate on smithing coal from Pittsburgh to Portales was really a paper rate, there being no local shipments in the region. It appeared that smithing coal was easily distinguishable from ordinary bituminous coal and was a considerably more valuable commodity and used for entirely different purposes.

Held, (Harlan, C.), (a) that the Commission would not pass on the reasonableness of the local rate from Pittsburgh to Portales, since this rate was a mere paper rate and of no interest to complainant or any other shipper of blacksmith coal, except as a means of evading the payment of a through rate;

(b) that smithing coal being an altogether different commodity, with different characteristics and a different value, the rate distinction in defendant's tariffs between that commodity and bituminous coal was based on a real difference in the commodities transported, and was proper;

(c) that the through rate from Chicago to Portales did not appear to be unreasonable;

(d) that as complainant and defendant had joined in the false billing of the coal in question, neither party came before the Commission with clean hands and it would, therefore, decline to enter a relieving order.

1055.—*In re Regulations Governing the Sale of Commutation Tickets to School Children.* 17 I. C. C. Rep. 144. (June 28, 1909.)

Petition by the Pierce School of Philadelphia and other schools

in Philadelphia and New York, asking for the modification of the administrative ruling of October 12, 1908.

The principal contention on the part of the petitioners was that reduced rates to school children were in the nature of a charity and, therefore, within the spirit, if not within the letter of the exceptions to the general rule contained in section 22 of the act.

Held, (Knapp, Ch.), (a) that special rates for this particular class of passengers were not authorized by any exceptions or any provisions of the act;

(b) that section 2 forbade the allowance of commutation tickets to school children unless the same rates were open to all children within the age limit.

Prayer of petitioners denied.

1056.—Bartles Oil Co. et al. v. Chicago, M. & St. P. Ry. Co. et al.
17 I. C. C. Rep. 146. (June 7, 1909.)

Complaint of unreasonable rate on illuminating oils and gasoline in Western Classification Territory.

Over the line of the Chicago, Milwaukee & St. Paul Railway Co., the principal defendant, the articles in question were rated third class. It appeared that practically all the other carriers in the region allowed fourth class rates to these articles and that the State Commissions of Minnesota and North and South Dakota also required them to be rated fourth class. After the filing of the complaint two of the defendants amended their tariffs prescribing fourth class rates.

Held, (Harlan, C.), that although the Commission was not controlled by rates established by State Commissions unless they seemed reasonable, yet, in view of the extensive application of fourth class rates and of the voluntary publication of such rates by other carriers, it appeared that fourth class rates must be compensatory and fairly remunerative, and rates in excess of fourth class were unreasonable.

Order accordingly.

1057-A.—American Coal Co. of Allegheny Co. et al. v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 149. (June 7, 1909.)

Complaint of unreasonable rate on big vein coal from George's Creek, Md., to tidewater as compared with rates on small vein coal from the same district and on coal from more distant competitive points.

In the George's Creek Basin, as appeared from the report in *George's Creek Basin Coal Co. v. Baltimore & O. Ry. Company* (675), there were two veins underlying one another, the one producing big vein coal and the other small vein coal. The former brought a somewhat higher price in the market and was of superior quality. When the coal from the Pennsylvania, West Virginia and George's

Creek fields on the Baltimore & Ohio and Western Maryland roads went over the piers at Philadelphia, Baltimore and Curtis Bay for destinations inside and outside the two capes, it met severe competition with coal from mines on the Chesapeake & Ohio, Norfolk & Western, Pennsylvania, and New York Central railroads, making it necessary for the carriers to shrink the rates to the former points in order that the shippers from such points might hold their own as against the latter. Because, however, of the superior quality of the George's Creek coal, it was not found necessary to shrink rates on such coal as much as rates on coal from Pennsylvania and West Virginia fields. This difference resulted in an adjustment under which there was a differential of 10c. against George's Creek coal when water-borne to competitive points inside the capes, and of 15c. a ton when destined to points outside the capes. Later on, when the small vein coal in the George's Creek Basin was first mined, it was found inferior in quality and unable to compete with the other coals under the differential applicable to the large vein coal. The complaint was then filed by the small vein operators with a view to having the differential against small vein coal removed and in *George's Creek Basin Coal Co. v. Baltimore & O. Ry. Co.* (675), the Commission issued an order granting the necessary relief without disturbing the rates on big vein coal and without passing on the question as to whether the big vein operators were entitled also to have the differential removed. The object of this proceeding was to remove the differential as to large vein coal and to secure an order requiring the carriers to cease from charging on George's Creek coal any higher rate than that charged on coal from more distant points in the same general region. It appeared that coal from the Pennsylvania and West Virginia fields did not pass directly through the points where the George's Creek coal was mined, the latter being situated on short lateral branch lines, but that for all practical purposes the George's Creek Basin was intermediate to mines on the more westerly district. From these points rates were from 10c. to 25c. a ton lower than from George's Creek Basin although the distance was from 50 to 100 miles greater.

Held, (Harlan, C.), (a) that the rates on big vein coal at present were unreasonable and unduly discriminatory and should not exceed the rates on small vein coal or on coal from the more distant Pennsylvania and West Virginia fields when water-borne to the same destination;

(b) that George's Creek rates need not be lower than from the more distant points, the grouping in question being reasonable.

Order accordingly.

1057-B.—*Philadelphia & Reading Ry. Co. et al. v. Interstate Commerce Commission.* 174 Fed. 687. C. C. E. D. Pa. (Nov. 20, 1909.)

Demurrer to bill to enjoin the Commission from enforcing its order of June 7, 1909, establishing rate on big vein George's Creek coal.

The ground of the demurrer was that all the proceedings were regular as required by the statute; that the conclusion of the Commission was not arbitrary or fraudulent and was, therefore, not reviewable by the court. The Pennsylvania Railroad argued that as it entered the George's Creek Basin only and not the West Virginia and Pennsylvania fields, the order of the Commission would subject it to pains and penalties should the Baltimore & Ohio thereafter change its rates from the West Virginia and Pennsylvania fields.

Held, (Buffington, C. J.), (a) that the fixing of rates under the act by the Commission, being an incident to the regulation of commerce and a non-judicial function, when the legislative branch of the government had itself acted therein, or by proper delegation of its powers had acted through the executive branch, such action, provided no legal, constitutional, or natural right had been violated, was not to be suspended or vacated by a court;

(b) that the question presented to the court in such cases was one of law, namely, whether the executive transcended its power or exercised such power without due regard to law;

(c) that from the opinion of the Commission, it appeared that the latter body had not ordered the abolition of the differential against big vein coal merely because of the fact that by reason of its higher cost of production it could not, with the differential against it, compete successfully with coals in the Pocohontas and New River districts;

(d) that the result of the Commission's order was merely to put big vein coal on an equality with all the other coals in a rate group previously recognized by the defendant;

(e) that from the facts it appeared that not only did the Commission act lawfully, but was constrained to order the enforcement of a uniform rate in the whole group in accordance with the provisions of the act;

(f) that the contingency suggested by the Pennsylvania Railroad was too remote to invoke injunctive relief at the present time.

Bill dismissed.

1058.—Brook-Ranch Mill & Elevator Co. v. Missouri Pacific Ry. Co. et al. 17 I. C. C. Rep. 158. (June 28, 1909.)

Complaint of discrimination in favor of one T. H. Bunch and the T. H. Bunch Company by various devices in connection with the transportation of grain and provisions at Argenta, Ark., a point near Little Rock, Ark.

The questions herein involved had been the subject of criminal prosecutions in which Bunch and the carriers had both been subjected to severe fines. See (730-B). It appeared that a large grain

mill and elevator with private switch tracks had been leased by the railroads to Bunch at practically a nominal rental. Allowances were also made to him for elevation at the rate of 1¼c. per 100 lbs. under tariffs nominally making elevator allowances at Little Rock, which, however, were not allowed to complainant. It appeared that defendants had made offers to lease another elevator to the Cunningham Company, but under terms so unfavorable as to make it inadvisable for the latter to accept the lease. By various devices, it appeared that Bunch had secured an immense advantage by having the use of a modern mill and elevator, fully equipped, at practically no cost. Defendants contended that they had made a *bona fide* effort to get rid of him and to cancel the agreement.

Held, (Harlan, C.), that the arrangement in question resulted in an unlawful preference of Bunch and an undue discrimination against other grain dealers and must be discontinued.

Order accordingly.

1060-A.—Houston Coal & Coke Co. v. Norfolk & Western R. Co.,
Powhatan Coal & Coke Co. v. Norfolk & Western R. Co.
171 Fed. 723. C. C. W. D. Va. (July 8, 1909.)

Demurrer to bills to enjoin the filing, posting and enforcing of a proposed schedule of rates alleged to be unreasonable and to a second bill to enjoin the enforcement of a rate already published and filed.

The Commission had not yet had an opportunity to pass on the reasonableness of the rates in question.

Held, (McDowell, D. J.), (a) that under the act, the Commission had no power to pass on the reasonableness of a rate until the same was in force;

(b) that if the court should enjoin the carrier from enforcing an existing rate, the latter would be precluded from charging any rate until the new rate was duly filed;

(c) that under the decision in the Abilene Cotton Oil Case (454), the court had no power to enjoin the filing or enforcement of a rate prior to the determination of its reasonableness by the Commission;

(d) that although section 22 provided that existing remedies at common law be preserved in spite of the act, the same reasoning which took from the courts the power to award damages for charging an unreasonable rate subsequent to the passage of the act, deprived them of their power to enjoin its filing or enforcement;

(e) that it was not the intention of the Sherman Act virtually to destroy the effect of the Interstate Commerce Act by giving to the courts power to enjoin the enforcement of unreasonable rates prior to the Commission's investigation of the same, merely because of an allegation of combination or conspiracy.

Bills dismissed for want of jurisdiction.

1060-B.—Houston Coal & Coke Co. v. Norfolk & W. Ry. Co. 178

Fed. 266. C. C. A. 4th Cir. (Feb. 14, 1910.)

Appeal by the complainant from foregoing.

Held, (Per Curiam), that in accordance with the decision in *Columbis Iron & Steel Co. v. Kanawha & M. Ry. Co.*, (945-B), judgment should be affirmed.

1061.—Chesapeake & Ohio Ry. Co. v. Standard Lumber Co. 174

Fed. 107. C. C. A. 4th Cir. (July 15, 1909.)

Writ of error to C. C. S. D. W. Va. on judgment for plaintiff in action of assumpsit by Standard Lumber Co. against the Chesapeake & Ohio Railway Company.

The Standard Lumber Co., plaintiff below, was a Kentucky corporation engaged in manufacturing and selling ties at Louisa, Ky. It appeared that prior to 1899 a great deal of the tie traffic had proceeded by way of the Big Sandy River to the Ohio. In order to secure this traffic for itself, the Chesapeake & Ohio Railway entered into a contract with the Lumber Company under which the latter was to build a tie hoist and connecting track at its plant. The Railroad Company agreed to transport all ties coming over the hoist for the Lumber Company from Louisa to Huntington, W. Va., for \$8.50 per car, and from the net revenue accruing to the railroad from such traffic to deduct 10% and refund the same to the Lumber Company in liquidation of the expenses of building the hoist and tracks until the amount refunded should equal the cost of construction, when the hoist and track should become the property of the railroad. The hoist and tracks were constructed by the Lumber Company and the railroad continued the \$8.50 rate for about a year, when it increased the rate, making it from \$10 to \$17 and \$18 per car. At the time the \$8.50 rate was in effect the tariff rate on ties not taken over the hoist was \$10 per car, a difference of about $\frac{1}{2}$ c. per tie in favor of the plaintiff who operated the hoist. No other shippers could use the hoist except the plaintiff and after the increase in the rate, which practically prevented the Lumber Company from doing business at a profit, the hoist and tracks were sold for the nominal sum of \$200, although their cost was estimated at about \$3,500. It appeared that the Lumber Company had never offered to transfer the track and hoist to the railroad. After the sale of its plant, the Lumber Company brought an action against the railroad for breach of the contract claiming—First, overcharge for freight; second, damages suffered by it by reason of the increase in freight rate over the contract rate; third, the cost of building the tie hoist. The court below refused to allow the jury to consider the first two items of damage, holding that the Interstate Commerce Act made the contract for a preferential rate illegal, but allowed recovery for the cost of building the tie hoist and track, to the amount of \$3505.70. From the judgment for this amount the railroad appealed.

Held, (Pritchard, C. J.), (a) that the construction of the tie hoist enured to the benefit of the Lumber Company in that it gave it preference over other companies similarly situated;

(b) that the provision allowing the Lumber Company to recover back the 10% on its freight bills resulted in its getting its property transported at a lower rate than indicated in the schedules;

(c) that the agreement resulted in the carriers assuming the cost of removing the shipper's property from the river to the carrier's own rails;

(d) that the fact that the tie hoist was not thrown open to the public and all shippers given an opportunity of using it showed conclusively that it was not intended by the railroad for transportation generally, but solely to induce this particular shipper to transport its ties by that railroad;

(e) that the latter transaction was a subterfuge by which one shipper was to be given advantage over others similarly situated;

(f) that an agreement for doing an unlawful act was absolutely void and could not be enforced for any purpose.

Judgment reversed.

1062.—*Aetna Powder Co. v. Chicago, M. & St. P. Ry. Co.* 17 I. C. C. Rep. 165. (Nov. 23, 1909.)

Complaint of unreasonable rate on gun powder from Chicago to Green Bay, Shullsburg, and Platteville, Wis., and demand for reparation.

Under the defendant's tariffs, on shipments of more than 10,000 lbs. and less than 20,000 lbs. of gun powder, single first class rates were applicable, but shipments of less than 10,000 lbs. were rated double first class. Complainant shipped something less than 6,000 lbs. and was charged the first class rate applicable to 12,000 lbs. Defendant admitted that the complaint was well founded and had put in effect a tariff provision that on shipments of less than 10,000 lbs. double first class rates should be charged, the aggregate charges not to exceed those on 10,000 lbs.

Held, (Harlan, C.), that reparation should be awarded on the basis of the charge applicable to a shipment of 10,000 lbs.

1063.—*Central Commercial Co. v. Atchison, T. & S. F. Ry. Co. et al.* 17 I. C. C. Rep. 166. (Nov. 23, 1909.)

Complaint of unreasonable rate on liquid asphaltum from Caney, Kas., to Minneapolis, Minn., and demand for reparation.

The rate charged was the published rate of 38c. There was in effect from other points in the immediate vicinity a rate of 19½c. which subsequently was made effective from Caney, and which defendants admitted would have been a reasonable rate.

Held, (Harlan, C.), that reparation would be awarded on the basis of the 19½c. rate.

1064.—**Lautz Bros. & Co., Inc., v. Lehigh Valley R. Co. et al.**
17 I. C. C. Rep. 167. (Nov. 24, 1909.)

Complaint of unreasonable class rates from Buffalo, N. Y., to points north of Whitehall, N. Y.

It appeared that these increases were made for the purpose of harmonizing the Buffalo rates with rates from points east of Buffalo to the same points of destination, and thus removing a discrimination in favor of Buffalo, and that to restore the old rates would restore this discrimination. The rates were not alleged to be unreasonable *per se*.

Held, (Clark, C.), that under the facts the Commission would not feel justified in disturbing this group system of rates.

Complaint dismissed.

1065.—**Muskogee Traffic Bureau v. Atchison, T. & S. F. Ry. Co. et al.** 17 I. C. C. Rep. 169. (Nov. 24, 1909.)

Complaint of preference of Fort Smith, Ark., over Muskogee, Okla., in rates on salt from Kansas producing territory.

The basis of the complaint was the fact that Ft. Smith was about 80 miles more distant than Muskogee from the points of origin. Prior to the filing of the complaint, the rates to Muskogee were considerably higher than to Ft. Smith. Complainants contended that Muskogee was entitled to a rate of 3c. per 100 lbs. less than the Ft. Smith rate. After the filing of the complaint the Muskogee rate was reduced so as to place Muskogee and Ft. Smith on an equality.

Held, (Clark, C.), (a) that rates could not be based solely on considerations of distance;

(b) that the grouping of Fort Smith and Muskogee as at present enforced was reasonable.

Complaint dismissed.

1066.—**Crosby & Meyers v. Goodrich Transit Co. et al.** 17 I. C. C. Rep. 175. (Nov. 24, 1909.)

Complaint of excessive charge on cheese shipped from Kewanee, Wis., to Louisville, Ky.

At the time the shipment was made complainants arranged to have it delivered to a certain consignee in Louisville, but through an error of the defendants' agent it was all unloaded at the defendants' freight house. Defendants admitted that it should have been delivered to the consignee free of charge. The defendants' mistake resulted in complainant being required to pay \$10.18 drayage charge.

Held, (Clark, C.), (relying on a previous unreported decision by the Commission) (a) that the shipper in both cases had the right to refuse to accept the shipment at the freight house and to demand delivery at the point originally designated;

(b) that in view of the fact that complainant did not insist on his rights, the Commission had no power to authorize the carrier to refund drayage costs.

Complaint dismissed.

1067.—Olympia Brewing Co. et al. v. Northern Pacific Ry. Co. et al. 17 I. C. C. Rep. 178. (Nov. 24, 1909.)

Complaint of unreasonable rental charge on carloads of beer shipped from Olympia, Wash., to points in California, and demand for reparation.

It appeared that defendants did not consider the rate on beer to southern points sufficient to justify the use of its refrigerator equipment beyond its own rails, as it had not more than enough to supply its own needs. It, therefore, hired refrigerator cars for this traffic and charged a rental of \$5 per car on cars hired from the Armour and Pacific Fruit Companies. Subsequently, this rental charge was eliminated in the defendants' tariffs. The rental charge was not exacted from any brewing companies not located at Puget Sound points.

Held, (Clark, C.), (a) that complainants being without option in the matter had been compelled to pay the rental charge in question;

(b) that this charge was an unusual and arbitrary one and was unreasonable.

Case held open for further proceedings necessary in the matter of reparation.

1068.—Ellsworth Produce Co. v. Union Pacific R. Co. et al. 17 I. C. C. Rep. 182. (Nov. 23, 1909.)

Complaint of unreasonable charge on eggs from Ellsworth, Kas., to Butte, Mon., and demand for reparation.

The published rate on eggs between the points in question was \$1.90, but the tariff provided that less-than-carload shipments not marked "plainly and indelibly" with the name of the consignee and point of destination should be rated one class higher. The shipment in question was marked merely with the initials of the consignee and the higher rate was, therefore, exacted. Since the date of the shipment the rule was changed so as to provide that the shipment would not be received unless plainly marked.

Held, (Harlan, C.), (a) that although a carrier might properly decline to receive merchandise for transportation not properly marked, yet a rule increasing the rate for this reason was of doubtful validity;

(b) that the enforcement of the rule in this case resulted in an overcharge which should be refunded.

Order accordingly.

1069.—Contract Process Co. v. New York, O. & St. L. R. Co. et al. 17 I. C. C. Rep. 184. (Nov. 23, 1909.)

Complaint of unreasonable charge on sulphuric acid from Buffalo, N. Y., to Tulsa, Okla., and demand for reparation.

The shipment in question contained no specific routing instructions. There was in effect a local rate of 20c. from Buffalo to East St. Louis, and a joint through rate of 65c. from East St. Louis to Tulsa; also a local rate of 10c. from East St. Louis to Kansas City, and of 20c. from Kansas City to Tulsa. By the former route, the combination rate was 85c., but by the latter, 50c. The 85c. rate was in fact exacted.

Held, (Harlan, C.), (a) that in the absence of a specific joint rate it was the duty of defendants to apply the lowest combination of legally published local rates;

(b) that reparation should be awarded on the basis of the 50c. rate.

1070.—Davies v. Illinois Central R. Co. 17 I. C. C. Rep. 186. (Nov. 25, 1909.)

Complaint of tariff provision issued in pursuance of the order of the Commission in Wholesale Fruit & Produce Assn. v. Atchison, Topeka & Santa Fe Ry. Co. (705.)

In pursuance of the above order the defendant filed a tariff providing a charge of 1c. for removing consolidated carload shipments in packages from the cars to the station platforms or depots and assorting the property for distribution to the owners. Complainant contended that the service should include the actual distribution and that no extra charge should be imposed except where the goods were both assorted and distributed. A new tariff was subsequently filed in the exact language of the Commission's order.

Held, (Prouty, C.), that the previous order did not require defendant to deliver the freight to the various owners, but simply to distribute the shipments.

Complaint dismissed.

1071.—Minneapolis Threshing Machine Co. v. Chicago, St. P., M. & O. Ry. Co. et al. 17 I. C. C. Rep. 189. (Nov. 24, 1909.)

Complaint of unreasonable rate on threshing machines and engines from Hopkins, Minn.

Hopkins was situated three miles south of Minneapolis and 15 miles from Minnesota Transfer. Prior to October, 1906, defendants had absorbed switching charge to all points surrounding Minneapolis, including Hopkins. On October 1, 1906, this absorption of switching charges was cancelled to all non-competitive points except Hopkins, the latter being omitted through an oversight. On January 10, 1909, the absorption of the charge at Hopkins was also cancelled.

Held, (Cockrell, C.), that the facts disclosed no reason why Hopkins should be allowed an advantage in the absorption of switching charges not permitted to other non-competitive points.

Complaint dismissed.

1072.—Davenport Pearl Button Co. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 193. (Nov. 24, 1909.)

Complaint of unreasonable rate on mussel shells from Terre Haute, Ind., to Davenport, Ia., and demand for reparation.

The rate exacted was 17c. per 100 lbs., which was the sixth class rate. Prior and subsequent to the shipments in question there was in effect a 15c. commodity rate on mussel shells between these points and defendants admitted that this rate was reasonable. One of the defendants alleged that it had received division of the 17c. rate based only on a 15c. rate, and asked that the award of reparation should not run against it.

Held, (Clark, C.), (a) that reparation should be awarded on the basis of the 15c. rate;

(b) that as both defendants participated in the shipments, the order should run against both, it being for them to arrange the division.

1073.—Van Brunt Mfg. Co. v. Chicago, M. & St. P. Ry. Co. et al. 17 I. C. C. Rep. 195. (Nov. 24, 1909.)

Complaint of unreasonable rate on agricultural implements from Horicon Junction, Wis., to points in Minnesota and North Dakota.

The rate exacted was 20c. per 100 lbs. and whereas prior and subsequent to the shipments in question there was in effect a 17c. rate. It also appeared from the tariffs that during a period of three years from 1905 to 1908 there were conflicting rates of 17c. and 20c. in effect and that between November 10th and November 21st, 1908, there was no rate in effect. The shipments in question were made in January and February, 1909. The 20c. rate was effective from November 21st, 1908, to March 1st, 1909, when the 17c. rate was again restored. The Chicago, Milwaukee & St. Paul Ry. Co. showed that the transportation was wholly over its line and that if reparation should be awarded it should run against it alone.

Held, (Clark, C.), (a) that the 20c. rate was unreasonable to the amount that it exceeded 17c.;

(b) that an order accordingly should be issued against the Chicago, Milwaukee & St. Paul Ry. Co., and that as to the other defendants the complaint should be dismissed.

Order for reparation accordingly.

1074.—Metropolitan Paving Brick Co. et al. v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 197. (Nov. 26, 1909.)

Complaint of unreasonable rate on fire, building, and paving brick

from points in Central Freight Association Territory to points in Trunk Line Territory, and demand for reparation.

In September, 1906, when the complaint was filed in *Stowe-Fuller Co. v. Pennsylvania Co. et al.* (499), fire brick was classed by itself at 25c. per 100 lbs., and paving brick and building brick were placed in another class at 20c. per 100 lbs. The Stowe-Fuller complaint was brought by a manufacturer of fire brick, demanding the same rate on all kinds of brick. In compliance with the order of the Commission in the Stowe-Fuller case, the carriers announced a rate of 22½c. from Chicago to New York on all three kinds of brick, to be scaled down from intermediate points. Representatives of the paving brick manufacturers and others thereupon applied to the Commission for an extension of the effective date of the order and in September, 1907, an injunction was issued by a district judge restraining the putting in effect of the 22½c. rate, which order continued to January, 1908. The day after the order expired the carriers put the 22½c. rate into effect and shortly after this the present complaint was filed, challenging the reasonableness of the rates on paving brick and praying that the Stowe-Fuller case be re-opened and reconsidered. Building and fire brick producers intervened. Complainants contended that there was a practical difference between the three kinds of brick which would warrant their different classification and that if they were to be classed together the 22½c. rate was excessive. The complainants suggested a number of different divisions which might be made in the various kinds of brick, but it appeared that all of them were subject to be abused by shippers and to induce false billing. It cost no more to transport fire brick than any other kind. Competitive conditions in connection with the different kinds of brick differed to a certain extent, but no scheme of classification was possible which would not encourage misbilling. The different kinds of brick also varied to a large extent in value within the different classes. Complainants suggested a classification limited to paving brick and block for the immediate use of the United States, but it appeared that the government rarely laid pavements itself, usually letting them out by contract. During most of the time that the 25c. fire brick rate was in effect, the fire brick was actually transported at a 20c. rate. Brick was desirable traffic and moved in large volume, could be loaded to full capacity, and was not subject to loss or damage.

Held, (Knapp, Ch.), (a) that although carriers might make different classification for property transported for the United States, they were not bound to do so;

(b) that there was no justification for lower rates for contractors doing work for the United States than for others;

(c) that under the circumstances appearing in the case, the Commission did not deem it advisable to modify the decision in the Stowe-Fuller case, or to prescribe a separate classification for different kinds of brick;

(d) that the 22½c. rate in effect was unreasonable and should be reduced to 21c.

(e) that reparation should be denied.

Order accordingly.

1075.—Kaye & Carter Lumber Co. v. Minnesota & International Ry. Co. et al. 17 I. C. C. Rep. 209. (Nov. 23, 1909.)

Complaint of unreasonable charge on cedar posts from Hines, Minn., to Benton, Neb., and Windsor, Mo.

Complainant in each case had ordered 33-foot cars but in each case was furnished with larger cars. The minimum on cars under 34-feet was 24,000 lbs. while on cars larger than 34-feet it was 30,000 lbs. The shipments in question weighed more than 24,000 and less than 30,000 lbs., and complainant was required to pay the minimum on the larger capacity, although the shipments each could have been loaded in 33-foot cars. At the time of the shipment there was no two-for-one rule in force, but subsequently such a rule was established.

Held, (Harlan, C.), (a) that "a carload rate and a minimum weight specified in a lawful tariff hold out a definite offer to the shipping public to move merchandise on those terms, and there should be a rule in all tariffs to the effect that when a carrier, for its own convenience, supplies a larger car than the one ordered, it will do so on the basis of the published rate and minimum weight applicable to the length of car so ordered by the shipper, in all cases where the shipment actually moved could have been loaded into the car ordered;"

(b) that reparation should be awarded accordingly and defendants be required to maintain a proper rule in their tariffs for two years.

1076.—Arlington Heights Fruit Co. et al. v. Southern Pac. Co. et al. 175 Fed. 141. C. C. S. D. Cal. (Nov. 22, 1909.)

Bill for injunction to restrain the putting into effect of proposed increase on rates on lemons from California to New York, pending the determination of the reasonableness of such rate by the Commission.

Prior to November, 1904, the lemon rate from California to New York had been fixed by the carriers at \$1 per 100 lbs., an emergency rate to enable shippers to meet the special conditions of the season and of the eastern markets. At that date, after negotiations between the parties, the rate was made a permanent one and on the faith of this understanding the shippers enlarged their orchards and increased their business. In November, 1909, however, the carriers proposed to advance the rate to \$1.15. The only reason for this would appear to have been that the new tariff law of 1906, had increased the duty on lemons from 1c. to 1½c. It appeared that com-

plainants would have suffered irreparable injury by reason of the increase and would have had practically to give up the lemon business, since they could not compete with the Sicilian growers at the increased rate.

Held, (Morrow, C. J.), that a temporary injunction would be granted to prevent the putting into effect of the higher rate until its reasonableness should be passed on by the Commission, complainants to give bond in the sum of \$250,000.

Temporary injunction issued as prayed for in the bill.

1077.—Weber Club & Intermountain Fair Asso. v. Oregon Short Line R. Co. et al. 17 I. C. C. Rep. 212. (Nov. 26, 1909.)

Complaint of preference of Salt Lake City, Utah, over Ogden, Utah, in the issuance of excursion tickets.

There were two Mormon conferences held each year at Salt Lake City, one in April and one in October. The defendants allowed special excursion rates for these, charging but one fare for the round trip during the week of the conferences. These rates were open to the public and many other organizations took advantage of them and held their conferences at Salt Lake City during this week. Among such was the Utah State Fair, which was held at Salt Lake City, and was a rival of the Intermountain Fair held at Ogden each fall. For the Ogden Fair, the defendants allowed rates of one and one-third fares for the round trip. The excursion rate to Ogden was not attacked.

Held, (Prouty, C.), (a) that the carrier might determine for itself whether it would sell mileage or commutation or excursion tickets, but if it elected to do so it must sell them subject to the provisions of the act;

(b) that since, however, the statute authorized discrimination in permitting the issuance of excursion tickets, it was only in cases where the privilege was plainly abused that the Commission was justified in interfering.

Complaint dismissed with the suggestion that half rate excursions be allowed for all state and county fairs.

1078.—Peerless Agencies Co. v. Atchison, T. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 218. (Nov. 24, 1909.)

Complaint of unreasonable rate on wood mantles from Buffalo, N. Y., to San Francisco, Cal., by reason of excessive minima, submitted on the record in *Montague & Co. v. Atchison, Topeka & Santa Fe Ry. Co.* (1043.)

The actual weight of the shipment in question was 14,580 lbs., but charges were assessed on a minimum of 16,000 lbs. at \$1.50. Defendants' tariffs made no distinction as to the minimum based on the size of the car furnished. The shipment could have been loaded

readily in a 40-foot car, but a 50-foot car was actually furnished. Complainant did not order any special size car.

Held, (Prouty, C.), (a) that under the facts a 14,000 lb. minimum would have been reasonable to have applied to the movement of this commodity in a 40-foot car and charges should have been assessed on the actual weight;

(b) that reparation should be awarded accordingly.

Clark, Clements and Lane, C. C., dissented on the ground that the complainant had not ordered a 40-foot car and if he choose to load less than the capacity of a 50-foot car, he had no cause for complaint.

See also 1080.

1079.—Acme Cement Plaster Co. v. Chicago & A. R. Co. et al.
17 I. C. C. Rep. 220. (Nov. 24, 1909.)

Complaint of unreasonable charge on cement plaster from Acme, Tex., and Marlow and Cement, Okla., to various points in the United States and demand for reparation.

Complainant had shipped several lots of cement to East St. Louis, Ill., where the tariff did not provide for reconsignment. On arrival of the shipments, complainant ordered them to its warehouse, removed half a carload, and rebilled the remainder to another point. It then insisted that the defendants charge only the balance of the through rate instead of the local rate from East St. Louis.

Held, (Prouty, C.), that the shipment from East St. Louis was an independent one as to which the local rate was properly applicable.

Complaint dismissed.

1080.—Pease Bros. Furniture Co. et al. v. San Pedro, Los Angeles & Salt Lake R. Co. et al. 17 I. C. C. Rep. 223. (Nov. 24, 1909.)

Complaint of unreasonable minimum carload regulations on furniture from eastern to Pacific coast points. Proceeding supplemental to Montague & Co. v. Atchison, Topeka & Santa Fe. Ry. Co. (1043.)

In accordance with the order of the Commission in 1043, the defendants had established a sliding scale, increasing the minimum for the length of the car above 40-feet. The shipments in question were carried in cars of more than 40-feet and assessed on the minimum fixed by the sliding scale. Complaints contended that charges should have been assessed on the basis of the minimum approved by the Commission for the car 40 feet long.

Held, (Prouty, C.), that there should be a relation between the minimum and physical capacity of the car, but the minimum might increase as the size of the car increased.

Complaint dismissed.

See also 1078.

1081.—**Baer Bros. Mercantile Co. v. Missouri Pacific Ry. Co. et al.**
17 I. C. C. Rep. 225. (Nov. 26, 1909.)

Complaint of unreasonable rate on beer from Pueblo, Col., to Leadville, Col., as part of a through shipment from St. Louis, Mo., and demand for reparation and for the establishment of a through route and joint rate between St. Louis and Leadville.

The shipments in question were made under the combination rate from St. Louis to Pueblo, 47c., and Pueblo to Leadville, 45c., a total of 92c. Neither the shipper nor the consignee intervened at Pueblo or elsewhere, the shipments going through and the charges being collected from the consignee. In *Baer Bros. Co. v. Missouri Pacific Ry. Co. et al.* (617), and also in *Nollenberger v. Northern Pacific Ry. Co.*, (855), the Commission had held that the 45c. rate from Pueblo to Leadville was unreasonable to the amount that it exceeded 30c. and that the facts presented an arrangement for through transportation. The rate to Salt Lake City, a more distant point on the same line, was but 70c.

Held, (Clements, C.), (a) that the law did not require the Commission to establish a through route and fix a through joint rate in every case but only in a proper case for the purpose of giving effect to the act;

(b) that in the present case the rate of 45c. from Pueblo to Leadville was unreasonable to the amount that it exceeded 30c.;

(c) that it was proper to charge a less rate to Salt Lake City than to Leadville;

(d) that no order would be issued prescribing a through route and joint rate;

(e) that reparation would be awarded on the basis of the 30c. rate.

Order accordingly.

1082.—**New Orleans Board of Trade, Ltd. v. Louisville & N. R. Co.** 17 I. C. C. Rep. 231. (Nov. 26, 1909.)

Complaint of unreasonable class local rates from New Orleans, La., to Mobile, Ala., and Pensacola, Fla., and of unreasonable class through rates from New Orleans via Mobile and Pensacola to Montgomery, Selma and Prattville, Ala.

The rates to Mobile and Pensacola were advanced in August, 1907, in order to make the sums of the local rates equal the through rates to Montgomery, Selma and Prattville, and to prevent shippers from getting the benefit of the lower combination rates on these points previously possible. The rates to Mobile and Pensacola in effect prior to the advance had been unchanged for 20 years.

Held, (Clements, C.), (a) that the advance of the rates to Mobile and Pensacola was unreasonable and that the former rate should be re-established;

(b) that through rates to Montgomery, Selma and Prattville

should not exceed the combination of local rates previously in effect.

Order accordingly.

1083-A.—West End Improvement Club v. Omaha & Council Bluffs Ry. and Bridge Co. et al. 17 I. C. C. Rep. 239, (Nov. 27, 1909.)

Complaint of unreasonable street railway fares from Council Bluffs, Ia., to Omaha, Neb.

The defendants operated a bridge across the Missouri River and also owned the stocks and bonds of a street railway company operating in Council Bluffs. The Omaha & Council Bluffs Street Ry. Co. operated all the street railway lines in Omaha and leased all the properties of the Bridge Company. The toll for foot passengers crossing the bridge was 5c. and this amount was added to the street railway fares, making the charge between points in Council Bluffs and points in Omaha 10c. The fare from Council Bluffs to certain designated points in Omaha known as the "loop" was 10c. and 5c. additional was charged to other points in Omaha. Defendants contended that complainant was not a proper party to maintain the action; that the defendants being street railway companies and not commercial railroads were not railroads within the meaning of the act and therefore not subject to its provisions and that the 10c. fare did not violate the act.

Held, (Clark, C.), (a) that complainant was a proper party to maintain the action;

(b) that the act applied to street railway companies;

(c) that the 10c. charge on traffic crossing the bridge was reasonable, but that this charge should be extended to all points in Omaha.

Prouty and Cockrell, C. C., and Knapp, Ch., concurred in the decision, stating that although they had doubts as to the question of jurisdiction, yet the adherence to the decision in *Willson v. Rock Creek Ry. Co.* (219), for 12 years established the jurisdiction over street railways as the law of the land.

Clements, C., concurred in the decision with regard to jurisdiction, but doubted the reasonableness of the 10c. fare.

1083.—Omaha & C. B. St. Ry. Co. et al. v. Interstate Commerce Commission. 179 Fed. 243. C. C. D. Neb. (April 25, 1910.)

Bill to enjoin the order of the Commission issued in the above.

Held, (Per Curiam), that as the court was of opinion that Congress did not intend the Act to apply to street railway companies, no power was thereby delegated to the Commission to regulate the rates of such companies and the Commission's order was, therefore, invalid and should be enjoined.

Injunction granted on entering bond.

1084.—Kindelon, Doing Business Under the Name of The Standard Hardwood Lumber Co. v. Southern Pacific Co. et al. 17 I. C. C. Rep. 251. (Nov. 26, 1909.)

Complaint of unreasonable rate on hardwood lumber from points along and west of the Mississippi River to San Francisco, Cal., and other Pacific Coast Terminals, and demand for reparation.

The rate in force at the time of the shipments in question was 85c. Subsequent to the decision in *Burgess v. Trans-Continental Freight Bureau* (659), the carriers reduced the rate from Chicago and Mississippi River points, including Memphis, to Pacific Coast terminals, to 75c. The region in question along and west of the Mississippi River had long been regarded by the carriers as Common territory with Chicago and Mississippi River points.

Held, (Clements, C.), (a) that the finding that the 85c. rate was unreasonable from Mississippi River points established that it was also unreasonable from all points in the territory which took the same rate on traffic transportation under similar circumstances and conditions;

(b) that from the facts presented a *prima facie* case was made out that the traffic from the points in question was transported under similar conditions with that involved in the *Burgess* case, *supra*;

(c) that reparation would be awarded accordingly on shipments made after June 28th, 1907, the date on which the *Burgess* complaint was filed, but that no reparation would be awarded on shipments made prior to that date.

See also 1126.

1085.—Awbrey & Semple v. Galveston, Harrisburg & San Antonio Ry. Co. et al. 17 I. C. C. Rep. 267. (Nov. 26, 1909.)

Complaint of unreasonable rate on cement from Galveston, Tex., to Magdalena, Mex., and demand for reparation.

Magdalena was situated on the Sonora Railroad in Mexico between Guaymas, Mex., and Nogales, Ariz. The rate in question was \$1, which was made up of the through rate to Guaymas, Mex., plus the local rate back to Magdalena. The local rate of 25c. from Guaymas to Magdalena was not filed with the Commission. The 75c. through rate to Guaymas had been in effect for a long time and was the result of water competition. There was also in effect a rate to Nogales of 62½c. which was published with the Commission and also a local rate from Nogales to Magdalena of 6c., which was not on file but which was a local rate established by the Mexican Government.

Held, (Clements, C.), (a) that there was no tariff authority for charging the \$1 through rate to Magdalena;

(b) that this rate was unreasonable to the amount that it exceeded the combination rate on Nogales;

(c) that the Commission could take notice of the existence of the latter rate even though the part between Nogales and Magdalena was not on file;

(d) that reparation would be awarded accordingly, and defendants required to establish and maintain for two years a rate not exceeding 62½c. from Galveston to Nogales when destined to Magdalena.

Order accordingly.

1086.—James & Abbot Co. v. Boston & Maine R. et al. 17 I. C. C. Rep. 273. (Dec. 6, 1909.)

Complaint of unreasonable rates on brick from Boston, Mass., to Lewiston, Me., and of overcharge by reason of misapplication of minimum carload regulation.

The brick in question was not common brick but was valued at from \$18 to \$24 per 1000, while common brick brought from \$6 to \$8. The carriers in this vicinity in some instances published low commodity rates applicable only to common brick, and complainant desired the establishment of such a rate as applicable to his shipment.

Held, (Cockrell, C.), (a) that the Commission had never held that a very high value brick need be carried at the same rate as common brick;

(b) that there was no evidence tending to show that the charges on the commodity here transported were unreasonable;

(c) that since the facts indicated an overcharge by the exaction of charges based on a 30,000 lb. minimum where the tariffs provided a 24,000 lb. minimum, reparation should be awarded accordingly, but otherwise the complaint should be dismissed.

1087.—Partridge Lumber Co. v. Great Northern Ry. Co. et al. 17 I. C. C. Rep. 276. (Nov. 26, 1909.)

Complaint of unreasonable rate on telegraph poles, telephone poles and fence posts from Beaudette and Warroad, Minn., to points in North and South Dakota, and petition for the establishment of through routes and joint rates.

During 1909 the rates between the points in question on posts were considerably advanced, while the lumber rates were allowed to remain as previously. In other parts of the country, the same rates were applied to posts as to lumber, and in some cases lower rates.

Held, (Prouty, C.), (a) that no higher rate should be charged on posts than on lumber;

(b) that through routes and joint rates between the points in question should be established at reduced figures named.

Order accordingly.

1088.—**Males Co. v. Lehigh & Hudson R. Ry. Co. et al.** 17 I. C. C. Rep. 280. (Dec. 6, 1909.)

Complaint of unreasonable charge on a locomotive from Easton, Pennsylvania, to Lake View, N. J., and demand for reparation.

The complainant had purchased the locomotive from the Lehigh Valley Railroad under an agreement requiring delivery at Easton, Pa., free of transportation charges up to that point. At the time the locomotive was at South Easton and from this point there was in effect a through rate of 10c. per 100 lbs. to Lake View. There was no through rate from Easton via the route over which this locomotive was routed, the lowest rate being the combination of 13c. on Hawthorne. There was, however, a joint through rate of 10c. in effect over another line. Easton was an intermediate point between South Easton and Lake View on the same route. It appeared that the complainant had not paid the 13c. rate.

Held, (Clark, C.), (a) that there was no evidence under which the 13c. rate might be found to be unreasonable except the fact that over another route a lower rate was applicable and the fact that a lower rate was applied from a more distant point on the same line, but since the question last mentioned was not raised by the pleadings, no decision thereon could be made;

(b) that the 13c. rate did not appear to be unreasonable;

(c) that even if the rate were found unreasonable, an award of reparation would not be made because complainant had not paid the lawful charges on the shipment.

Complaint dismissed.

1089.—**Connolly-Fanning Co. et al. v. Pennsylvania R. Co. et al.** 17 I. C. C. Rep. 283. (Nov. 26, 1909.)

Complaint of unreasonable rates on grapes from Seaboard points to Pittsburgh, Pa.

The grapes in question were barrel or Malaga grapes, which had previously been transported by water from Spain. They were rated as second class in carloads, and as first class in less-than-carloads. The same rates were applied to these as to domestic grapes, and these rates had been in effect for six years. Complainant asked that they be placed in the same class as fresh vegetables and that rates be applied to them lower than those applicable to domestic grapes.

Held, (Clements, C.), that the rates in question did not appear unreasonable.

Complaint dismissed.

1090.—**South Canon Coal Co. v. Colorado & Southern Ry. Co. et al.** 17 I. C. C. Rep. 286. (Dec. 13, 1909.)

Complaint of unreasonable rate on coal from complainant's mine in Colorado to Hutchinson, Kas., via Pueblo, Col., and Medora, Kas.

The complainant had ordered the shipment in question routed in the above way. The basis of the present complaint was the fact that over another route a lower rate was applicable.

Held, (Clark, C.), that the charge of the higher rate had been directly due to the routing specified by complainant.

Complaint dismissed.

1091.—*White Bros. v. Atchison, T. & S. F. Ry. Co. et al.* 17 I. C. C. Rep. 288. (Nov. 26, 1909.)

Demand for reparation on account of exaction of unreasonable rate on hard-wood lumber from points east of the Mississippi to San Francisco, Cal.

The through rate here complained of was 85c. per 100 lbs. In *Burgess v. Transcontinental Freight Bureau* (659), the Commission had prescribed a 75c. rate from the Mississippi River. By a combination of this rate with the local rates up to the river it was possible in some instances to produce a combination rate less than 85c., and this was the basis of the present complaint.

Held, (Clements, C.), (a) that the decision in the *Burgess* case did not control the question of the reasonableness of through rates from points east of the river;

(b) that the facts here disclosed did not warrant a finding by the Commission that the rates in question were unreasonable.

Complaint dismissed.

1092.—*Saner-Whiteman Lumber Co. v. Texas & N. O. R. Co. et al.* 17 I. C. C. Rep. 290. (Dec. 7, 1909.)

Demand for reparation by reason of exaction of unreasonable rate on lumber from Cairo, Tex., to Memphis, Tenn.

The rate exacted was the class rate of 41c., no commodity rate having been provided by the route over which the shipments moved. This rate defendants admitted to be unreasonable. Defendants had evidently intended to provide by their tariffs a lower commodity rate, but through error in the tariffs this had not been effected. Subsequently, the tariff was amended so as to provide a combination rate of 20c.

Held, (Clements, C.), that reparation should be awarded accordingly.

1093.—*Foster Lumber Co. v. Atchison, T. & S. F. Ry. Co. et al.* 17 I. C. C. Rep. 292. (Nov. 26, 1909.)

Complaint of unreasonable charge on lumber from Fosteria, Tex., to Gary, Ind., and demand for reparation.

At the time of the shipments in question the City of Gary was in process of construction and the railroads had not been able to complete all their switching connections. Certain of the shipments complainant specified for delivery on the Michigan Central tracks.

This could not be accomplished except by a routing different from that specified by complainant. Certain of the shipments, however, were routed and delivered by the defendants in such a manner as to result in charges higher than those which would have applied had defendants sent the freight by the best and cheapest available route.

Held, (Knapp, Ch.), (a) that where the excess charge resulted from the compliance with the complainant's routing instructions, he was entitled to no reparation;

(b) that where under complainant's routing instructions the freight might have been routed and carried at a lower rate than that applicable, complainant was entitled to the excess.

Order accordingly.

1094.—Stock Yards Cotton & Linseed Meal Co. v. Missouri, K. & T. Ry. Co. et al. 17 I. C. C. Rep. 295. (Dec. 7, 1909.)

Complaint of unreasonable rate on cotton-seed cake from Bartlett, Tex., to Winchester, Kas., and Onaga, Kas., and demand for reparation.

The rates exacted were combination rates on Kansas City of 31c. and 33¼c. respectively. Since the date of the shipments, a through rate had been established less than the sum of the locals and complainant demanded the difference.

Held, (Knapp, Ch.), that a carrier voluntarily establishing a through rate less than the sum of the locals after a shipment moved, was not necessarily responsible for the difference in the charges.

Complaint dismissed.

1095.—Jobbins, Inc. v. Chicago & N. W. Ry. Co. et al. 17 I. C. C. Rep. 297. (Nov. 26, 1909.)

Complaint of unreasonable charge on persulphate of iron from Aurora, Ill., to San Francisco, Cal., and demand for reparation.

Complainant had requested a 60,000 lb. car but was furnished two 40,000 lb. ones. Into one of these he loaded 44,013 lbs. and into the other 15,696 lbs., and paid charges at the rate of 60c. on the minimum of 60,000 lbs. The defendants' tariffs contained no two-for-one rule. On the arrival of the freight the delivering carrier demanded charges based on the minimum applicable to the two cars, in which the shipment was made, resulting in an excess of \$95.92. Subsequently the defendants' tariffs were amended so as to provide a two-for-one rule.

Held, (Knapp, Ch.), that reparation of the additional charge should be made and defendants required to maintain the two-for-one rule for two years.

1096.—Southern Bitulithic Co. v. Illinois Central R. Co. et al. 17 I. C. C. Rep. 300. (Dec. 14, 1909.)

Complaint of unreasonable rate on crushed stone from Cedar Bluff, Ky., to Baton Rouge, La., and demand for reparation.

The rate exacted was \$1.85. The formal complaint was not filed within two years of the shipment, but informal complaint was made within that time. The basis of the complaint was the existence of a rate of \$1.50 to New Orleans, but this rate was a competitive one.

Held, (Knapp, Ch.), (a) that the informal complaint tolled the running of the statute;

(b) that under the evidence, the rate in question did not appear to be unreasonable.

Complaint dismissed.

1097.—Crutchfield & Woolfolk v. Louisville & N. R. Co. et al.
17 I. C. C. Rep. 302. (Dec. 14, 1909.)

Complaint of unreasonable rate on grapes from Peewee Valley, Ky., to Pittsburgh, Pa., and demand for reparation.

Peewee Valley was 17 miles east of Louisville on the Louisville & Nashville Railroad. The rate exacted was 45c. per 100 lbs., for which there was no tariff authority. The rate in force was the local rate of 12c. from Peewee Valley to Louisville, plus the proportional rate of 30c. from Louisville to Pittsburgh, there being no joint rate from the point of origin to destination. The flat rate from Louisville to Pittsburgh was 39c.

Held, (Lane, C.), that complainant was not entitled to a rate equal to the proportional rate from Louisville, but that any charge in excess of 39c. was unreasonable.

Reparation awarded accordingly with an order to continue the 39c. rate for the future.

1098.—Williar v. Canadian Northern Quebec Ry. Co. et al. 17
I. C. C. Rep. 304. (Dec. 14, 1909.)

Complaint of unreasonable rate on newspapers from Grand Mere, Quebec, to San Francisco, Cal.

The rate exacted was 90c. per 100 lbs., which was the rate properly applicable via the route over which this freight was transported and routed by the shipper. At the same time there was in effect a 75c. rate through Chicago only and subsequently the 75c. rate was made applicable via all routes. Defendants contended that the initial carrier only was responsible for the excess charge by reason of misrouting.

Held, (Lane C.), (a) that carriers charged with exacting an unreasonable rate could not escape liability solely on the ground that the shipments might have been transported via a route carrying a lower rate;

(b) that the 90c. rate was unreasonable to the amount that it exceeded 75c. and reparation should be awarded accordingly.

1099.—**Mill Creek Cannel Coal Co. v. Coal & Coke Ry. Co. et al.** 17 I. C. C. Rep. 306. (Dec. 14, 1909.)

Complaint of unreasonable rate on cannel coal from Mill Creek-Elk, W. Va., to interstate points.

The rate in question was fixed at the bituminous coal rate plus an arbitrary of 25c. per ton. Subsequently, this was altered by amendments reducing the rate some 10c. or 15c. per ton, and this satisfied the cause of complaint.

Held, (Lane, C.), that the complaint should be dismissed.

1100.—**Vanness v. Lehigh & Hudson R. Ry. Co. et al.** 17 I. C. C. Rep. 307. (Dec. 13, 1909.)

Complaint of unreasonable rate on horses in carloads from Chambersburg, Pa., to Warwick, N. Y.

The rate in question was 42c. per 100 lbs. Certain of the defendants admitted that this rate was excessive to the amount that it exceeded 33c.

Held, (Prouty, C.), that reparation should be awarded on the basis of the 33c. rate.

1101.—**Old Dominion Copper & Smelting Co. v. Pennsylvania R. Co. et al.** 17 I. C. C. Rep. 309. (Dec. 7, 1909.)

Complaint of unreasonable charge on coke from Globe, Ariz., to Texas points, and demand for reparation.

On the greater part of the shipments in question, charges were exacted on the basis of actual weights, but on some of them the charges were demanded on the basis of the weight capacity of the car, in accordance with the instruction of the defendants' officials. The tariffs were ambiguous and susceptible of conflicting interpretations as regards the above point. The rates were paid on the basis of actual weights and the parties sought the authority of the Commission for waiving the excess demanded by the defendants on certain of the shipments.

Held, (Clements, C.), (a) that although railroad officials were to be commended for insisting on the exaction of their tariff charges, in the present case the tariffs were ambiguous and for that reason were condemned;

(b) that the defendants were authorized to waive the collection of charges based on weight capacity of the cars, the exaction of such charges being unreasonable;

(c) that no order would be issued in the present case.

1102.—**American Tie & Timber Co., Ltd. v. Kansas City S. Ry. Co. et al.** 175 Fed. 28. C. C. A. 5th Cir. (Dec. 28, 1909.)

Error to C. C. D. N. D. Tex. from judgment for defendants in action for damages for discrimination in refusal to furnish cars for cross ties for interstate shipments.

Defendants' tariffs provided a rate of 24c. from Arkansas and Louisiana points to Linwood, Kas., applicable to lumber of all kinds. The defendants contended that the lumber rate did not apply to cross ties and therefore it had no rate in effect on cross ties and could not lawfully haul such ties. The complainant had made a contract for the sale of a large number of cross ties based on the 24c. rate, and by reason of defendants' refusal to transport these ties at that rate, lost amounts which it now sought to recover as damages. The court instructed the jury to find for the defendants. The real reason of the defendant's action was that it wished to keep the ties on its own line and force the complainant to sell them at a low rate.

Held, (Shelby, C. J.), (a) that the petition stated a cause of action since it charged the unjust discrimination condemned by the statute in refusing to furnish cars for cross ties while furnishing them for other freight;

(b) that the Commission had so decided in *Paxton Tie Co. v. Detroit, So. Ry. Co.* (363);

(c) that the schedule provision quoting the 24c. rate on lumber applied to cross ties;

(d) that although the defendants might have provided a separate commodity rate applicable to cross ties, this rate must have been fixed at the same figure as the lumber rate.

Judgment reversed.

1103.—Memphis Cotton Oil Co. et al. v. Illinois Central R. Co. et al. 17 I. C. C. Rep. 313. (June 29, 1909.)

Complaint of unreasonable rate on cotton seed oil from points east of the Mississippi to northern and northeastern points.

On October 1, 1908, the rates which had been maintained for some 20 years were increased to some destinations by 5c. and to others by 2c. per 100 lbs. The basis of the complaint was this advance. It appeared that but a small part of the producers of this commodity were parties to or in sympathy with this proceeding. The rates in force prior to the advance had been established to meet water competition, which had since disappeared, owing to the use of tank cars for transporting oil. The increase made but a very small item in the cost of production of the oil. The service in question was an expedited one, owing to the demand for the tank cars used in shipment. Even under the advanced rates shippers at Memphis, where the principal complainants were located, had an advantage over competing points.

Held, (Harlan, C.), (a) that the fact that a lower rate had long been maintained undisturbed had a strong probative value;

(b) that since the reasonableness of a rate of necessity depended on conditions surrounding the traffic at the time it moved, the long

maintenance of rates raised no absolute or legal presumption that the advanced rates were unreasonable.

Complaint dismissed.

1104.—Springer v. El Paso & Southwestern R. Co. et al. 17 I. C. C. Rep. 322. (Dec. 7, 1909.)

Complaint of unreasonable charge on furniture from Chicago, Ill.

Complainant requested a 50-foot car but was given one 40-foot car and one of smaller dimensions. He was charged on the minimum applicable to the cars furnished and claimed the difference between that amount and what would have been charged had he received a 50-foot car. The tariff did not contain any two-for-one rule. Complainant had died since the action was begun.

Held, (Clements, C.), that the tariff in effect was unreasonable in the omission of the two-for-one rule and reparation should be awarded accordingly, which should be paid to complainant's representative.

1105.—Carstens Packing Co. v. Oregon Short Line R. Co. et al. 17 I. C. C. Rep. 324. (Dec. 7, 1909.)

Complaint of unreasonable rates on cattle from Glenn's Ferry and Mountain Home, Idaho, to Tacoma, Wash., and demand for reparation.

The basis of the complaint lay in the exaction of \$145 per car from the points in question, while there was in force from Blackfoot, Idaho Falls, and certain other Idaho points, more distant on the same line, a rate of \$129.80. It was alleged by defendants that the lower rates from the more distant points were compelled by competition, but it appeared that if such competition had formerly existed, it had been removed. Both rates were 10-carload rates. Violation of section 4 was not specifically alleged in the complaint. Since the filing of the complaint, there had been put in effect a rate of \$131.80 from Mountain Home and \$132 from Glenn's Ferry and the rate from Idaho Falls and Blackfoot had been raised to \$145.

Held, (Harlan, C.), (a) that the \$145 rate was unreasonable as applied to the shipments in question, and should not have exceeded the rate subsequently established;

(b) that reparation should be awarded accordingly;

(c) that the Commission should not be understood as either approving or acquiescing in the 10-carload rate or any wholesale rates of any kind beyond the carload rate.

1106.—Schoenhofen Brewing Co. v. Atchison, T. & S. F. Ry. Co. 17 I. C. C. Rep. 329. (Dec. 13, 1909.)

Complaint of unreasonable charge on empty beer kegs from Frontenac, Kas., to Chicago, Ill., and demand for reparation.

The rate collected was 17½c. The basis of the complaint was the fact that a rate of 11c. had previously been in force. This rate had resulted from severe market competition which did not appear to exist at the time of the shipment.

Held, (Prouty, C.), that the complaint should be dismissed.

1107.—Tyson & Jones Buggy Co. v. Aberdeen & Asheboro Ry. Co.
et al. 17 I. C. C. Rep. 330. (Dec. 7, 1909.)

Complaint of overcharge on iron wagon axles shipped from Wilkes-Barre, Pa., to Carthage, N. C., and demand for reparation.

The overcharge resulted in the inadvertent collection of fourth class instead of fifth class rates. The complainant had made frequent attempts to secure a refund of the overcharge without the Commission's assistance and had then called the matter to the Commission's attention informally, but securing no satisfaction, filed a formal complaint, after which the matter was immediately adjusted.

Held, (Harlan, C.), (a) that the attention of the Commission had frequently been called to delay on the part of carriers in refunding overcharges and this practice was severely condemned by the Commission;

(b) that in the Commission's judgment, claims for overcharges should be disposed of within thirty days, except those of unusual or special character, which should be adjusted within sixty days;

(c) that where the published rate had been collected and was alleged to be excessive, on informal complaint to the Commission, investigation should be made and the case put before the Commission for disposition within ninety days in the great majority of cases.

1108.—Crowell & Spencer Lumber Co. v. Texas & Pacific Ry. Co.
et al. 17 I. C. C. Rep. 333. (Dec. 13, 1909.)

Complaint of unreasonable charge on car wheels and axles from Marshall, Tex., to Holdup, La., and demand for reparation.

The rate exacted was the fifth class rate of 69c. At the time of the shipment there was no commodity rate in the direction in which the freight moved, although there was a commodity rate of 24c. in the opposite direction. The defendants' agent had advised complainant to allow the shipment to go forward, stating that defendants would establish a 24c. rate and would apply to the Commission for an adjustment of this shipment on that basis. Subsequently a 27½c. rate was established.

Held, (Prouty, C.), (a) that the Commission could not permit a refund applicable to a particular shipment for the sole purpose of enabling defendants to make good a rate not in effect when the shipment moved, but which they had agreed to protect;

(b) that the 69c. rate here exacted was unreasonable and should

not have exceeded 24c., and reparation should be awarded accordingly.

1109.—Kimberly v. Chesapeake & O. Ry. Co. 17 I. C. C. Rep. 335. (Dec. 13, 1909.)

Complaint of unreasonable rate on corn from Cincinnati, Ohio, to Morehead, Ky., and demand for reparation.

The rate exacted was 15c., the shipment moving by way of Ashland, Ky. To Mt. Sterling, a point on the Chesapeake & Ohio near Morehead, there was in effect a rate of 10c. per 100 lbs. via the Louisville & Nashville and Winchester, Ky. This rate, however, was alleged by defendants to be forced by competitive conditions existing at Winchester. There was, however, in effect over the Chesapeake & Ohio a combination of local rates amounting to 14c. The complaint was filed February 15, 1909.

Held, Prouty, C.), (a) that the 15c. rate was unreasonable to the amount that it exceeded 14c.;

(b) that reparation should be awarded accordingly, as regards shipments on which the freight was paid subsequent to February 15, 1907.

1110.—Bascom Co. v. Atchison, T. & S. F. Ry. Co. 17 I. C. C. Rep. 354. (Dec. 7, 1909.)

Complaint of unreasonable charge on mixed shipments of barbed wire, wire nails, wire staples, and wire fencing from El Paso, Tex., to Las Cruces, N. Mex., and demand for reparation.

At the time of the shipments in question defendants published an open fifth class rate of 30c. per 100 lbs. from El Paso to Las Cruces, applying it an all shipments that had reached El Paso over competing lines. There was also in force a rate of 10c. which was specified to apply only on shipments which had reached El Paso over the defendant's line, and which required the shipper to show this fact in order to secure the benefit of the 10c. rate. The American Steel & Wire Company forwarded a cargo to the complainant at Las Cruces from De Kalb, Ill., billing it to El Paso by the Frisco route, and having it there rebilled over the defendant's line to Las Cruces by the railroad agent. The latter exacted the regular rate from De Kalb to El Paso of 64c. and for the haul from El Paso to Las Cruces charged the 30c. rate. There was in effect at the time a through rate from De Kalb to Las Cruces of 92c. The complainants demanded the benefit of the 10c. rate from El Paso to Las Cruces.

Held, (Harlan, C.), (a) that the 10c. rate was not a proportional rate and the Commission could not recognize as valid a proportional rate limited to shipments coming to the proportional rate point over the lines of a particular carrier;

(b) that such a rate would discriminate as against shippers over another line;

(c) that the shipment from El Paso to Las Cruces was an independent local movement to which the 30c. rate was properly applicable;

(d) that the 10c. rate as published in defendant's tariffs was illegal and could not be sanctioned;

(e) that no order would be issued for the present, but unless defendant withdrew the 10c. rate promptly, it would be taken as an admission that it was reasonable as applied to all shipments.

1111.—Pabst Brewing Co. et al. v. Chicago, M. & St. P. Ry. Co. et al. 17 I. C. C. Rep. 359. (Dec. 14, 1909.)

Complaint of unreasonable charge on empty beer packages from Omaha, Neb., to Milwaukee, Wis.

The rate exacted was the tariff rate of 16c. Prior to and subsequent to the shipment in question there had been in effect a rate of 11c., and defendants joined in the request that reparation be awarded on that basis. The case was submitted for determination on the pleadings.

Held, (Lane, C.), (a) that it was not the Commission's province to order reparation for the exaction of an alleged unreasonable charge merely upon a showing that the carrier was willing to honor the claim;

(b) that an award of reparation can be predicated only upon an affirmative finding that the rate exacted was in fact excessive;

(c) that in view of the earnings on this freight, the 16c. rate did not appear to be necessarily unreasonable.

Complaint dismissed.

1112.—Joynes v. Pennsylvania R. Co. 17 I. C. C. Rep. 361. (June 29, 1909.)

Demand for reparation by reason of discrimination against complainant in favor of his competitors in prompt delivery of fruit at defendant's 54th Street yards in Pittsburgh.

The basis of the complaint was that the cars of other fruit shippers were promptly placed in position at defendant's unloading platform and given a preferred use of defendant's terminal facilities, while complainant's cars were delayed, resulting in a heating of the fruit and its being delivered in a spoiled and rotten condition, entailing on him a loss, including demurrage, storage, additional help, deterioration and loss of trade to the sum of \$30,497.70, for which amount he asked an award of damages.

Held, (Harlan, C.), (a) that in spite of the apparently conclusive language in several paragraphs of the act, the Commission had reached the conclusion that its power to award damages was limited to transportation or rate damages, and did not extend to general damages, having no connection with rates, such as demanded in the present case;

(b) that the expert knowledge and qualification of the Commission especially fitted it to pass on questions of the reasonableness of rates and of discriminations and preferences, but the Commission was not as well qualified as a court and jury to judge of general damages such as those demanded in the present case;

(c) that when the jurisdiction of the Commission was invoked under complaint of discrimination, it should ascertain whether the discrimination complained of existed and whether the carrier had in fact failed in the duty imposed by any provision of the act, but having ascertained this, the Commission should leave the assessment of any resulting damages to be determined in a formal action brought in a court of competent jurisdiction;

(d) that in every doubtful case, the Commission ought not to take jurisdiction, but resolve the doubt in favor of the courts where such jurisdiction was ordinarily vested;

(e) that the complaint would be dismissed unless the Commission was advised by the complainant of his desire to have the Commission consider whether, apart from the general damages claimed, the acts of the defendant, as alleged in the complaint, constituted an undue and unjust discrimination.

Lane, C., with whom concurred Clements and Prouty, CC., dissented on the ground that the act clearly gave the Commission power to award damages such as those claimed in the present case; that the Commission had often before assumed jurisdiction of such cases and that it could not decline to take jurisdiction in its discretion in a case where such jurisdiction was given it by the act.

1113.—Pacific Elevator Co. v. Chicago, M. & St. P. Ry. Co. et al.
17 I. C. C. Rep. 373. (Jan. 4, 1910.)

Demand for reparation on account of exaction of unreasonable rate on soft coal from Green Bay, Wis., to Wetonka and Leola, S. Dak.

The rate charged was the tariff combination rate in effect at the time. Subsequently joint rates were established lower than those previously in effect. The defendants admitted that the rates exacted were excessive and joined in a request that they be allowed to refund the excess.

Held, (Clark, C.), that the Commission would not award reparation on the basis of a rate lower than that which it would prescribe as reasonable, and it was not sufficient that the carrier and shipper jointly requested the Commission to authorize such a refund. Complaint dismissed.

1114.—Snook v. Central R. Co. of New Jersey. 17 I. C. C. Rep. 375. (Jan. 4, 1910.)

Petition for an order directing the restoration of station facilities at Roycefield, N. J.

It appeared that Roycefield was situated between Somerville and Flagtown, N. J., being about $2\frac{1}{2}$ miles from each. South Somerville was a station on the Lehigh Valley 3-5 mile east of Roycefield, the Lehigh Valley running substantially parallel with the defendant's line. The Roycefield station had been established forty years previous to the complaint. In November, 1908, it was destroyed by fire and thereafter a freight car was used as a station for some months, when it was withdrawn. Roycefield was now a flag station. In the past it had been of more importance than it was at the time of the filing of the complaint. Scarcely any passenger or freight business was now done from this station and it appeared to cost more to maintain it than the amount of revenue it produced.

Held, (Harlan, C.), (a) that ordinarily it was the duty of a judicial tribunal to pass on the question of its jurisdiction before going into the merits of the case, but that this rule did not apply to an administrative tribunal like the Commission;

(b) that in the present case the Commission would not pass on the question of jurisdiction, since, from the facts, the Commission was of the opinion that even if it had the power to grant the required relief, the defendant's discontinuance of the Roycefield station was reasonable.

Complaint dismissed.

1115.—Corporation Commission of the State of Oklahoma, for the Use and Benefit of the Robinson, Crawford & Fuller Lumber Company v. Chicago, R. I. & G. Ry. Co. et al. 17 I. C. C. Rep. 379. (Jan. 3, 1910.)

Complaint of unreasonable charge on lumber from Beckville, Tex., to Oklahoma points, and demand for reparation.

It appeared that prior to October, 1907, the defendants had maintained joint through rates of $26\frac{1}{4}c.$ and $22\frac{1}{2}c.$ to the points in question, but that on that date these rates were cancelled and remained cancelled until May, 1908, when they were re-established. Between these two dates, the complainant made the shipments in question, but the defendants' agent refused to bill them through because the joint through rate theretofore in force had been cancelled. The freight was, therefore, forwarded through on a combination of local rates resulting in charges exceeding $26\frac{1}{4}c.$ and $22\frac{1}{2}c.$, and complainant demanded the excess.

Held, (Cockrell, C.), (a) that under the act it was the duty of carriers to receive shipments, issue receipts, indicate on the way bills the final destination and transport and deliver them to the connecting carrier, and it was the duty of the connecting carriers to transport and deliver the freight at destination, each carrier charging for its service its legally published rate;

(b) that the rates exacted in this case were unreasonable to the amount that they exceeded $26\frac{1}{4}c.$ and $22\frac{1}{2}c.$, the through rates pre-

viously and subsequently in force, and reparation should be awarded accordingly.

1116.—Ocean County Coal Co. v. Central R. Co. of New Jersey et al. 17 I. C. C. Rep. 383. (Jan. 3, 1910.)

Complaint of discrimination against Point Pleasant, N. J., in favor of nearby points, in rates on coal from coal mines in Pennsylvania.

The basis of the complaint was the fact that to nearby points north of Point Pleasant, the rate was \$1.90, while to Point Pleasant it was \$2.05. It appeared, however, that the \$1.90 rate was forced by the railroad having the short line to the northern points, while as to Point Pleasant and southern points this condition was not present.

Held, (Cockrell, C.), that the facts did not disclose a violation of the act.

Complaint dismissed.

1117.—Foster Lumber Co. v. Gulf, C. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 385. (Jan. 3, 1910.)

Complaint of unreasonable rate on coal from Huntington, Ark., and Bonanza, Ark., to Fostoria, Tex., and of violation of the long and short haul clause in a lower rate to Cleveland, Tex., a more distant point on the same line.

The rate in question at the time of the shipment was \$3.10 per ton, while at the same time there was in effect a rate of \$2.60 to Cleveland, a more distant point on the same line, 6 miles east of Fostoria. Subsequently the rate to Fostoria was reduced to \$2.60. The \$2.60 rate to Cleveland was the result of competition.

Held, (Cockrell, C.), (a) that the competition at Cleveland justified the lower rate;

(b) that the voluntary reduction of a rate by a carrier would not, without proof that the rate was unreasonable, furnish a basis for reparation.

Complaint dismissed.

1118.—Werner Saw Mill Co. v. Illinois Central R. Co. 17 I. C. C. Rep. 388. (Jan. 4, 1910.)

Demand for reparation for exaction of unreasonable rate on yellow pine lumber from south-east points to north and north-west points.

On June 28th, 1907, the complainant filed a petition demanding reparation on account of the advanced rate to the amount of 2c. per 100 lbs., but on October 8th, 1907, on application of complainant's counsel, the case was dismissed without prejudice. This action resulted from an agreement between complainant and defendant that if the proceedings be withdrawn, defendant would take no ad-

vantage of the Statute of Limitations. The present petition asked that the original suit be re-instated *nunc pro tunc* and also that additional and supplemental claims might now be filed *nunc pro tunc* as of June 28th, 1907.

Held, (Clements, C.), (a) that as the original case was not heard on the merits, in view of the express reservation in the order of the Commission, it might now be re-instated *nunc pro tunc* and the Commission would so order;

(b) that the Commission could not sanction a practice which would permit the revival of claims barred by the statute by subsequently attaching them to other claims presented within the prescribed period;

(c) that the original petition should be re-instated *nunc pro tunc*, but without any amendment or supplement as to any new or additional claims.

Order accordingly.

1119.—*Rossie Iron Ore Co. v. New York C. & H. R. R. Co.* 17
I. C. C. Rep. 392. (Jan. 3, 1910.)

Demand for reparation on account of the improper exaction of demurrage charges on coal at Keene's N. Y.

The cars in question arrived about the middle of April, 1907, but were never switched to complainant's mine. There was a conflict of testimony as to whether complainant was ever notified that the coal had arrived; by reason of its non-delivery to complainant, demurrage charges to the amount of \$348 were exacted, and paid.

Held, (Prouty, C.), (a) that under the facts, the Commission failed to find that notice of arrival had been given to complainant;

(b) that the amount of demurrage should, therefore, be refunded complainant.

Order accordingly.

1120.—*Harmon & Co. v. Lake Shore & M. S. Ry. Co. et al.* 17
I. C. C. Rep. 394. (Jan. 3, 1910.)

Complaint of unreasonable rate on go-carts from Elkhart, Ind., to Tacoma, Wash., and demand for reparation.

The rate exacted was the tariff rate of \$2.60, which was the regular second class rate. At the same time there was in effect a mixed carload rate on go-carts and similar articles of \$2.20, being the third class rate, and subsequently a commodity rate was established on go-carts of \$1.75. It appeared that, until recently, shipments of go-carts were of rare occurrence and that they were formerly made of wood and could not load nearly so heavily as at the present time.

Held, (Knapp, Ch.), that in view of the facts, reparation on past shipments should be denied, but an order should be entered requiring the maintenance of the present rate for two years.

1121.—Loch Lynn Construction Co. v. Baltimore & O. R. Co. 17 I. C. C. Rep. 396. (Jan. 3, 1910.)

Complaint of discrimination against Mountain Lake Park, Md., in favor of Deer Park and Oakland, Md., and Terra Alta, W. Va., by refusal to stop passenger trains at Mountain Lake Park on Sundays, although stopping such trains at the preferred points.

Complainant owned and operated a summer hotel at Mountain Lake Park. It appeared that in 1883 the Mountain Lake Park Association, a religious and educational association, had entered into a contract with the defendant under which it deeded two acres of land to defendant and in consideration, defendant agreed in writing not to stop any trains at Mountain Lake Park on Sunday. Defendant's refusal to stop trains on Sunday diverted business to the hotels at the other points above named. It appeared, however, that a number of people came to Mountain Lake Park by reason of the religious influence of the association.

Held, (Clements, C.), (a) that the question of discrimination here involved must be determined wholly independent of the contract in question;

(b) that carriers had the right reasonably and practically to adjust the speed of their trains and the frequency of stops to the various circumstances and conditions existing along their lines at different places;

(c) that in view of all the facts, the refusal to stop trains at Mountain Lake Park on Sunday was not an undue discrimination against that locality or the complainant.

Complaint dismissed.

1122.—Pope Manufacturing Co. v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 400. (Jan. 4, 1910.)

Demand for reparation on account of alleged unreasonable charge on automobiles from Hagerstown, Md., to Marinette, Wis.

The complainant alleged that he had asked for a 36-foot car, on which the minimum was 10,000 lbs., but that a 49 ft. 6 in. car had been furnished, which resulted in a higher charge. There was a conflict of testimony, however, as to this question.

Held, (Harlan, C.), (a) that under the testimony the Commission could not find definitely that the smaller car had been demanded, or that complainant had objected to the larger one;

(b) that the Commission recommended that in all cases carriers make a demand or order for cars of definite lengths in writing, or at least promptly and definitely confirm verbal orders in writing.

Complaint dismissed.

1123.—California Fruit Growers' Exchange v. Santa Fe Refrigerator Despatch Co. et al. 17 I. C. C. Rep. 404. (Jan. 4, 1910.)

Demand for reparation by reason of unreasonable refrigeration charges on citrus fruit from Los Angeles, Cal., to eastern points.

At the time of the shipment in question defendants' tariffs provided for an additional charge of \$15 per car when empty cars were ordered to loading points under ice. Defendants had intended to exact this charge only in cases where, by reason of the location of the loading point, re-icing was required after the loading was completed, and subsequently amended the tariff so as to make this clear. In case of these shipments the cars were placed at the loading points under ice, but were immediately forwarded without additional refrigeration. Defendants admitted by their answer that the exaction of the charge was unreasonable and stipulated that the case might be determined on the pleadings.

Held, (Lane, C.), that reparation should be awarded accordingly, on the presentation of evidence of the payment of the charges, and an order should be issued requiring the maintenance of the present rule for two years.

1124.—Farmers' Co-operative & Educational Union et al. v. Great Northern Ry. Co. et al 17 I. C. C. Rep. 406. (Jan. 4, 1910.)

Complaint of unreasonable rate on grain from points in Washington, Oregon and Idaho to Astoria, Ore., as compared with rates to Portland, Ore., and to Seattle and Tacoma, Wash., and petition for establishment of joint through rates from points of origin in the wheat belt, to Astoria the same as to Tacoma, Seattle and Portland.

Astoria was situated near the mouth of the Columbia River about 10 miles from the ocean and 100 miles west of Portland. On shipments of wheat from Washington, Oregon and Idaho, the defendants made a group rate to Tacoma, Seattle and Portland. The only road reaching Astoria was the Astoria & Columbia River Road, the stock of which was owned by the Spokane & Seattle Railway, whose stock was jointly owned by the Northern Pacific and Great Northern. The rates to Astoria were made up by adding to the Portland rate the local of the Astoria & Columbia River Road of 10c. per 100 lbs. Defendants had provided tracks, warehouses, wharves, etc., for handling export grain at Portland, Seattle and Tacoma and it appeared that it would be very expensive to place the same facilities at Astoria.

Held, (Clark, C.), (a) that although the system of the Astoria and Columbia River Railroad was controlled by the Northern Pacific and Great Northern Companies, this did not prevent the Astoria & Columbia River Railroad from being an independent line;

(b) that the establishment by the defendants of arrangements for exporting at Portland, Seattle and Tacoma did not impose upon them the obligation of duplicating such facilities at Astoria;

(c) that on through shipments of grain from the points of origin to Astoria, it was unreasonable to exact a rate more than 4½c. per 100 lbs. higher than the rate contemporaneously in force from the same points to Portland.

Order accordingly.

1125.—Ottumwa Commercial Association v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 413. (Jan. 4, 1910.)

Complaint of unreasonable proportional rates from Mississippi River crossings to Ottumwa, Ia., applicable on through traffic originating at points west of the Indiana-Illinois state line and of unreasonable through class rates from Chicago to Ottumwa.

It appeared that the issues raised were substantially the same as those presented in *Greater Des Moines Committee v. Chicago, Rock Island & Pacific Ry. Co.* (1040, 1041*), the only difference being that in the former case, Des Moines was the point of destination while in the present proceeding Ottumwa was the destination.

Held, (Harlan, C.), that the rates in question were unreasonable to the amount that they exceeded figures named and should be reduced accordingly.

1126.—White Bros. v. Atchison, T. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 416. (Jan. 10, 1910.)

Complaint of unreasonable rate on hard-wood lumber from Black Rock, Ark., to San Francisco, Cal., and demand for reparation.

The questions involved were identical with those in *Kindelon, etc. v. Southern Pacific Co.* (1084).

Held, (Clements, C.), that in accordance with the decision in the foregoing case, an order for reparation would be entered.

1127.—Railroad Commission of Tennessee v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 418. (Jan. 4, 1910.)

Complaint of preference of Covington and Brownsville, Tenn., over Jackson, Tenn., in shipments of cotton to New England mills.

Covington, Brownsville and Jackson were situated on a line drawn east from the Mississippi River, Covington being 16 miles from the river, Brownsville 20 miles east of Covington and Jackson 25 miles east of Brownsville. The rate from Covington and Brownsville was 60½c. and from Jackson 70c. per 100 lbs., these rates all being joint through rates. Covington was 38 miles north of Memphis. The rate from Memphis was 47½c., and the local rate from Covington to Memphis 20c. on compressed cotton. The 60½c. rate from Covington was made in order to meet the Memphis rate and the rate from Brownsville was made the same in order to meet competition with Covington. Jackson was situated with reference to Brownsville in the same way that Brownsville was with reference to Covington, but the railroads did not choose to meet the Brownsville competition at

Jackson. The Louisville & Nashville was the initial line serving Brownsville. The Illinois Central was the only road running to Covington. Jackson was served by the Illinois Central and by the Nashville, Chattanooga & St. Louis. The defendants contended that the Louisville & Nashville made the 60½c. rate from Brownsville and that the line from Brownsville to destination was not the same as the line from Covington or the line from Jackson.

Held, (Prouty, C.), following *Indiana Steel & Wire Co. v. Chicago, Rock Island & Pacific Ry. Co.* (908) (a) that there was a discrimination in the present case against Jackson, for which the defendants were responsible and which they properly might be required to remove;

(b) that as the question was not one under section 4, it did not matter that the same lines did not serve the three points;

(c) that the rate from Jackson should not exceed that from Brownsville by more than 5c. per 100 lbs.

Order accordingly.

Knapp, Ch., with whom concurred Harlan, C., dissented for the reasons stated in the dissenting memorandum in *Indiana Steel & Wire Co. v. Chicago, Rock Island & Pacific Ry. Co.* (908).

1129.—Asparagus Growers' Association, of Charleston County, S. C. v. Atlantic Coast Line R. Co. et al. 17 I. C. C. Rep. 423. (Jan. 12, 1910.)

Complaint of unreasonable freight rates and refrigeration charges on asparagus from Charleston, S. C., to northern points, and of discrimination against small shippers in favor of carload shippers by refusal to furnish refrigeration for less-than-carload shipments.

The latter point was the principal basis for the complaint. It appeared that in 1906 there were two competing refrigerator lines in operation, and such competition resulted in the lines instituting a practice of consolidating less-than-carload shipments. Subsequently but one car line operated in this territory and by reason of this fact and of the disastrous financial result of the attempt by the carriers to furnish less-than-carload refrigeration, it was eliminated. It cost as much to the carriers to refrigerate an empty car as a full one. Comparison was made with rates on other articles moving under refrigeration. Complaint was made also of the requirement of 24 hours advance notice of need of a refrigeration car, and of a rule requiring shippers to pay the cost of icing on cars ordered and not loaded.

Held, (Clark, C.), (a) that neither of the rules last specified were unreasonable;

(b) that under the facts the refrigeration charges and the rule refusing refrigeration for less-than-carload lots were not unreasonable or discriminatory;

(c) that the rates for transportation were unreasonable to the

extent that they exceeded figures named and should be reduced accordingly.

Order accordingly.

1130-A.—Larrowe Milling Co. v. Chicago & N. W. Ry. Co. et al.
17 I. C. C. Rep. 443. (Jan. 4, 1910.)

Complaint of unreasonable charge on sugar-beet pulp from Janesville, Wis., to Cattaraugus, N. Y., and Winber, Pa., and demand for reparation.

The principal defendant had two lines from Janesville to Chicago, the direct line being 91 miles in length and the indirect line through Waukesha and Milwaukee 162 miles. In the shipments in question, no routing instructions were given up to Chicago, but the first shipment was routed via the Erie Despatch, which connected with the Chicago & North Western at Chicago. The route from Chicago on either shipment, whether shipped by the direct line to Chicago or through Milwaukee, was over the lines of but one carrier—in the one case the Erie Despatch, in the other, the Pennsylvania Railroad. There was no specific joint through rate in effect over either route. The shipments were routed by the direct line to Chicago and then, the one over the Erie to destination, and the other over the Pennsylvania. The rate applied in case of the first shipment was the Class E rate of 6.09c. per 100 lbs. to Chicago, plus the commodity rate of 11c. beyond. There was at the same time, however, in effect, a commodity rate of 3c. to Waukesha and an 11c. rate from Chicago to destination, which, under the tariffs, applied to Milwaukee and other 100 per cent. points, including Waukesha. By use of the latter combination rate, a 14c. rate was produced as against that of 17.09c., the rate charged. In case of the second shipment, the same system of making the rate was followed, resulting in a higher combination than would have been charged had the shipment been routed via Waukesha and Milwaukee and the combination on Waukesha used. The shipments were made January 16th, 1906, and the complaint not filed until March and June, 1909, but they were first lodged informally with the Commission January 7th, 1908.

Held, (Harlan, C.), (a) that the case was controlled by Rule 215, of Conference Rulings Bulletin No. 4;

(b) that there being no specific joint through rate in effect over either route, the lower combination on Waukesha was the legally applicable basis for making up the through charges, notwithstanding the fact that the shipment actually moved over the direct route to Chicago;

(c) that the Commission intervened in misrouting cases only when additional transportation charges accrued either as the result of the failure of the carrier to obey the shipper's routing instructions or where, in the absence of such instructions, a more expensive route was used by the carrier than that which was available;

(d) that the present case did not involve the question of mis-routing since the lower rates through Waukesha were rates legally applicable over the direct route to Chicago and the case was merely one of an overcharge which should be refunded.

Order accordingly.

See also 1144.

1130-B.—Larowe Milling Co. v. Chicago & N. W. Ry. Co. et al.
17 I. C. C. Rep. 548. (Feb. 7, 1910.)

This case involved the same question as 1130-A, and the same decision was reached by the Commission. In addition, however, it appeared that by a clerical error in defendants' tariffs the proportional rate through Waukesha was applicable to "beet pulp, C. L. (for the manufacture of sugar.)" In fact, beet pulp was the residue after extracting the sugar.

Held, (Harlan, C.), (a) that with reference to matters covered in 1130-A, similar reparation should be awarded by the Commission;

(b) that the tariff provision being manifestly an error, the restriction would be treated as surplusage.

Order accordingly.

1131.—Murphy and Murphy, Co-partners, Trading as Murphy Bros. et al. v. New York Central & H. R. R. Co. 17 I. C. C. Rep. 457. (Jan. 3, 1910.)

Claim for reparation on account of alleged improper exaction of demurrage charges at Melrose Station, New York City.

The defendant's rule, in effect at the time, computed the demurrage from 48 hours after the first 7 A. M. after placement, and provided that prompt notice should be given to the consignee. The notices were mailed, and complainants claimed that 90 per cent. of them were received, by the morning mail between 8 and 8.30 o'clock. The carrier, however, contended that the demurrage time should run 48 hours after the sending of the notices. It appeared that practically all the shippers receiving freight at this point called once or twice a day at the defendant's office and received verbal notice of the arrival of cars. There was not specific proof with reference to each car.

Held, (Clements, C.), (a) that it was not reasonable to compute demurrage from the time of receipt of notice, the time of the sending notice being the proper date;

(b) that under the facts it appeared that the complainants had obtained actual notice of the arrival of cars by calling at the defendant's office;

(c) that in the absence of specific proof as to each car, the Commission could not have awarded reparation.

Complaint dismissed.

1132.—Armour Car Lines v. Southern Pacific Co. 17 I. C. C. Rep. 461. (Jan. 3, 1910.)

Complaint of unreasonable rate on ice in carloads from Los Angeles, Cal., to Yuma, Ariz., and demand for reparation.

Prior to August, 1907, the rate in force was \$3 per ton, when it was reduced to \$1.90. During 1907 complainant had a contract to furnish ice to sundry stations in California. When this contract was made, the rate to Yuma was \$3 and complainant protested against it but was assured by defendant that it would be promptly reduced. This was not done until August, 1907, after all the shipments in question had moved, the failure being probably due to an error or oversight in the tariff department of defendant. Complainant alleged that the contract was made in view of the \$1.90 rate which had been promised.

Held, (Clements, C.), (a) that to sanction a private understanding between a shipper and a carrier as a just basis for reparation would be to establish a precedent for the grossest discrimination and favoritism;

(b) that even conceding that the arrangement in the present case was made in absolute good faith and that the failure to do so was due to an error, it was clear that both parties were guilty of gross laches in proceeding for so long in the handling of a large amount of traffic without any change of the rate;

(c) that the law requiring adherence to published rates could not be adapted to individual cases, but must be applied to every transaction alike, whether actual preference resulted or not.

Complaint dismissed.

1133.—Barrett Mfg. Co. v. Central R. Co. of New Jersey. 17 I. C. C. Rep. 464. (Jan. 4, 1910.)

Petition for compensation on account of lighterage service performed by complainant between its plants and defendant's terminals.

Defendant's terminals were located in New York City, requiring lighterage on all shipments from across New York Harbor. Prior to January, 1906, defendant's lighterage service was inadequate and during this period complainant, in order to facilitate the movement of its shipments, took the matter into its own hands and performed for itself, by its own lighters, the service of moving its merchandise across the harbor. On January 1st, 1906, defendant arranged for ample facilities for lighterage, but complainant did not learn of this until August, during which period it lightered a large amount of freight, for which it now claimed compensation at 3c. per 100 lbs., this being the admitted cost of the service. In March, 1908, defendant inserted in its tariffs a provision allowing 3c. per 100 lbs. to shippers doing their own lightering.

Held, (Harlan, C.), that although complainant could have re-

quired defendant to lighter its merchandise, yet, since the complainant had done the lightering for its own convenience, and since the tariff in force at the time had provided no compensation therefor, it was not entitled to reparation.

Complaint dismissed.

1135.—**Jones v. Kansas City Southern Ry. Co.** 17 I. C. C. Rep. 468. (Dec. 7, 1909.)

Demand for reparation on account of alleged misrouting of hay from Amsterdam and Merwin, Mo., to Memphis, Tenn.

Between the points in question there were two possible routes, over one of which there was in effect a combination rate on Kansas City of 21½c., and over the other a through class rate of 33c. The shipment was delivered without routing instructions, but the bill of lading over the more expensive route was made out by defendant's agent and accepted by the consignor.

Held, (Harlan, C.), that routing instructions inserted in a bill of lading by a railroad agent without any instructions by the consignor were not binding as against the shipper, and did not relieve the initial carrier from the obligation to forward the shipment over another route cheaper than that mentioned in the bill of lading.

Reparation awarded accordingly, with a statement that the Rock Island, not a party to the record, should participate in the payment thereof, on the basis of the agreed divisions.

1136.—**Merle Co. v. Atchison, T. & S. F. Ry. Co. et al.** 17 I. C. C. Rep. 471. (Jan. 4, 1910.)

Complaint of unreasonable rate on metal furniture knobs or trimmings, from Grand Haven, Mich., Waterbury, Conn., and Rome, N. Y., to San Francisco, Cal., and demand for reparation.

The rate charged was in some cases the first class rate of \$3 per 100 lbs., and in others the second class rate of \$2.60. At the same time there was in effect a commodity rate of \$2 per 100 lbs. on "brass shells and canopies for gas and electric light fixtures, boxed." The only difference between the articles shipped and those carried at the latter commodity rate was the use to which they were put, and a new tariff in effect after the shipments in question extended the commodity rate to all of the articles.

Held, (Harlan, C.), that brass furniture trimmings and furniture knobs should not take a higher rate between the points in question than the rate on "brass shells and canopies for gas and electric light fixtures, boxed" and the reasonable rate for all was \$2 per 100 lbs.

Order accordingly.

1137.—**Merle Co. v. New York Central & H. R. R. Co. et al.** 17 I. C. C. Rep. 475. (Jan. 4, 1910.)

Complaint of unreasonable rate on brass-covered iron tubing from

New York City and neighboring points to San Francisco, Cal., and demand for reparation.

The complainant had a factory in San Francisco where he manufactured iron and brass bedsteads, getting the material from the east. A certain article used by him consisted of iron tubing coated on the outside with brass, seven-eighths of the thickness of the tubing consisting of iron. The defendants applied to this product the rate on brass goods at \$1.35 per 100 lbs. in carloads and \$1.85 in less-than-carloads. Complainant contended that the rate on iron tubing should be applied, namely \$1.00 per 100 lbs. in carloads.

Held, (Harlan, C.), (a) that the article in question was neither iron nor brass tubing;

(b) that although it was unreasonable to rate this product as brass tubing, defendants might allow it a rate between the two;

(c) that under the circumstances a reasonable rate was \$1.25 in carloads and \$1.75 in less-than-carloads;

(d) that reparation should be awarded on the basis of the rates thus fixed.

1138.—Cedar Hill Coal & Coke Co. et al. v. Colorado & Southern Ry. Co. et al. 17 I. C. C. Rep. 479. (Jan. 10, 1910.)

Petition for the establishment of through routes and joint rates on coal from complainants' mines in the Walsenburg district, Col., to points on the Pecos lines, and to points on the lines of the Atchison, Topeka, & Santa Fe Railway; for a differential in favor of slack and nut coal over lump coal; and for an order requiring the establishment of a rule permitting reconsignment of coal.

Prior to August, 1905, there had been through rates in effect to the points in question, but on the acquisition of the Pecos lines by the Santa Fe, these rates and arrangements had been cancelled by the latter road because it desired to promote shipments from mines located on its own lines which would insure it a long haul. The rates in effect at the time the complaint was filed were admittedly prohibitory. The reason for asking a differential in favor of slack and nut coal was to enable complainants to compete with lump coal.

Held, (Clements, C.), (a) that there being no reasonable or satisfactory route in existence for this traffic, such rates and routes should be established, it being left to the defendants to prescribe the divisions of through rates;

(b) that the Commission would not attempt to fix a differential in favor of slack and nut coal;

(c) that reconsignment was a privilege, not a right to be demanded by shippers, and could only be required where necessary to correct unjust discrimination, and not in a case like the present.

Order issued accordingly.

1139.—**Lauer & Son v. Nevada-California-Oregon Ry.** 17 I. C. C. Rep. 488. (Feb. 7, 1910.)

Complaint of unreasonable rate on potatoes and onions from Reno, Nev., to Alturas, Cal., and demand for reparation.

The rate in question was 80c. per 100 lbs. The defendant's road was a narrow gauge one, the distance 184 miles. The complaint was based on the fact that there was in effect at the time a lower combination of local rates on Likely, Cal., of \$12 per ton and a rate of \$6 per ton on the same commodities between the same points in the opposite direction.

Held, (Knapp, Ch.), that the rate in question was unreasonable to the extent that it exceeded \$12 per ton and reparation would be awarded accordingly.

Buneh and Tussey v. Nevada-California-Oregon Ry., 17 I. C. C. Rep. 490, Feb. 7, 1910, accord.

1140.—**West Texas Fuel Co. et al. v. Texas & Pacific Ry. Co. et al.** 17 I. C. C. Rep. 491. (Feb. 8, 1910.)

Petitions for reparation founded on the exaction of a switching charge of \$5 per car at El Paso, Tex., held to be unreasonable by the Commission in **West Texas Fuel Co. v. Texas & Pacific Ry. Co.** (825).

The warehouses of certain of the complainants were located on the tracks of the Texas & Pacific and of others a short distance from the tracks. As regards the former, the Commission had held specifically that the \$5 switching charge was unreasonable to the amount that it exceeded \$3, but no reparation was asked for except on a single carload, consideration of which was barred by the Statute of Limitations. Complainants now asked in a separate proceeding for reparation on shipments made within two years prior to date of the reduction of the charge. The defendants had complied with the order of the Commission as regards switching to warehouses on their tracks, but still had maintained the \$5 charge as to industries situated a short distance off its tracks.

Held, (Clark, C.), (a) that as to shipments to warehouses on the tracks of the Texas & Pacific, no reparation would be awarded on shipments made prior to the date when the Commission's order went into effect;

(b) that as regards shipments to points a short distance from defendants' tracks, the charge of \$5 per car was unreasonable to the amount that it exceeded \$3 per car, and reparation would be awarded on all shipments subsequent to the date when the Commission's original order became effective.

Order accordingly.

1141.—**New Orleans Board of Trade et al. v. Illinois Central R. Co. et al.** 17 I. C. C. Rep. 496. (Feb. 8, 1910.)

Complaint of unjust discrimination against shippers of forest

products from interior points to New Orleans, La., on local bills of lading for export, in favor of shippers of such products on through export bills of lading, by charging no demurrage or storage to the latter at New Orleans, while such charges were made against the former after ten days.

On lumber shipped to New Orleans locally, demurrage was charged after 48 hours free time. If shipped on local bills and marked for export, 10 days free time was allowed, and if shipped on through bills no demurrage or storage was charged. There were several reasons why export shippers did not wish to use through export bills, among these being the fact that in time of congestion, shipments on local bills moved more quickly than those on through export bills, since the latter were in control of the carriers and in time of congestion they would put these aside in order to relieve the congestion at the terminals. It appeared that although more free time was allowed at Boston, Philadelphia and Baltimore, yet generally speaking, more free time was allowed on export shipments at New Orleans than at any other port south of Norfolk.

Held, (Clark, C.), that the ten days' free time allowed exporters on local bills of lading did not appear to be unreasonable or unjustly discriminatory.

Complaint dismissed.

1142.—Liebold, Doing Business Under the Name and Style of Liebold Co. et al. v. Delaware, L. & W. R. Co. et al.
17 I. C. C. Rep. 503. (Feb. 14, 1910.)

Complaint of unreasonable rate on beer in carloads from points on and east of the Mississippi River to San Francisco, and demand for reparation.

Prior to January 1st, 1909, for 14 years, the rate had been \$1 per 100 lbs., with a 24,000 lb. minimum. On that date it was increased to 30,000 lbs. which gave greater carload earnings than at the former rate.

Held, (Knapp, Ch.), (a) that this case was clearly distinguishable from those where a rate long in force was advanced, maintained at a higher figure for a long time and then voluntarily reduced to the former basis;

(b) that the Commission could not find that the rate actually charged was unreasonable.

Complaint dismissed.

1143.—Bunch & Tussey v. Nevada-California-Oregon Ry. 17 I. C. C. Rep. 506. (Feb. 7, 1910.)

Complaint of unreasonable rate on apples from Reno, Nev., to Alturas, Cal., and demand for reparation.

The rate charged was \$1.70 per 100 lbs. which yielded more than 18c. per ton mile for a distance of 184 miles. The defendant's

railroad was a narrow gauge one. In the opposite direction, there was a rate of \$7 per ton for earloads and \$13 for less-than-earloads.

Held, (Knapp, Ch.), that the rate was unreasonable to the extent that it exceeded \$1 per 100 lbs., and reparation would be awarded accordingly.

1144.—United States v. Martin. 176 Fed. 110. D. C. N. D. Ia. W. D. (Feb. 4, 1910.)

Demurrer to indictment charging the knowing and unlawful aiding, assisting and abetting of one Phillips, a person not entitled to free transportation, in obtaining the same.

The indictment charged that on or about November 6th, 1908, defendant had in his possession a free pass issued by the Chicago and North Western and the Chicago, St. Paul, Minneapolis & Omaha, to C. R. Nelson, providing free transportation for the said Nelson from Sioux City, Ia., to Chicago, Ill., and that the defendant on or about said date did unlawfully dispose of the same and deliver it to Phillips for the purpose and intent of enabling him to obtain free transportation, knowing that he was not the person named in the pass, and not entitled to travel thereon, and not a person authorized to use a free ticket, and that on said date Phillips did in fact use the said ticket. The demurrer was based on the ground that the Act forbade only the issuance of a free ticket or pass to an unauthorized person, or the unlawful use of such pass by such person.

Held, (Reed, D. J.), (a) that the indictment plainly charged the defendant with using the ticket to aid, assist and abet Phillips to violate the Act;

(b) that the unlawful use of a free pass forbidden by the Act was not restricted to its use in traveling over a railroad, the language being sufficiently broad to forbid its use not only for the purpose of riding, but also for the purpose of assisting another to ride unlawfully;

(c) that in declaring the obtaining of free transportation a misdemeanor, Congress clearly intended that all who should aid, and abet the commission of the offense should be charged and tried as principals.

Demurrer overruled.

1145.—Rehberg & Co. v. Erie R. Co. et al. 17 I. C. C. Rep. 508. (Feb. 8, 1910.)

Complaint of overcharge on clothing from New York to Janesville, Wis., and demand for reparation.

The question here involved was the same as that in *Larrowe Milling Co. v. Chicago & North Western Ry. Co.* (1130). The shipment in fact proceeded by the direct line from Chicago to Janes-

ville, and charges were collected on the basis of the rate by this route, although there was in effect at the same time a lower combination by way of Waukesha, Wis. The shipment was made in January, 1906, the complaint informally brought to the Commission's attention in May, 1907, and formal complaint filed in September, 1909. Defendants contended that as the complainant had permitted the defendants' denial to the informal complaint to stand without further effort for more than two years before filing the formal complaint, he had no standing before the Commission, but it appeared that considerable correspondence had been carried on during these two years. As against the Erie and Chicago & Erie Railroads, however, it appeared that the complainant had made no effort to advise the roads of any complaint until September, 1909.

Held, (Clark, C.), (a) that the Waukesha combination was the lawful rate and reparation should be awarded accordingly;

(b) that as regards the Chicago & North Western, complainant had not abandoned its claim and an order of reparation would be entered against the Chicago & North Western accordingly.

1146.—Landers, Frary & Clark v. Atchison, T. & S. F. Ry. Co. et al. 17 I. C. C. Rep. 511. (Feb. 8, 1910.)

Complaint of unreasonable rate and classification on coffeepot percolators in Western Classification Territory.

The complainants' contrivance was used to make coffee in the kitchen and to prevent certain deleterious objects from getting into the coffee. Defendants classed complainants' contrivance as double first class with coffee percolators used for making coffee on the dining table, which were usually of ornamental design.

Held, (Prouty, C.), that the coffeepot percolators should be classed as first class.

Order accordingly.

1147.—Crane Iron Works v. Central R. Co. of New Jersey et al. 17 I. C. C. Rep. 514. (Feb. 8, 1910.)

Complaint of discrimination against complainant in favor of competing iron works by defendants' refusal to absorb the switching charge of the Crane Railroad Company in switching freight to complainant's works, although absorbing such charge on switching to other plants, and of unreasonable rates to complainant's plant.

This proceeding was framed to meet the objections and suggestions of the Commission in *Crane R. R. Co. v. Philadelphia & Reading Ry. Co.* (793), in which the Commission refused to establish joint through rates between the Crane Railroad Co. and the Philadelphia & Reading Ry. Co. It appeared that the Crane Iron Works had constructed a number of tracks in and around its plant and had switched its own cars to and from defendants' tracks until 1905, when it was found necessary to incorporate the Crane Railroad Com-

pany in order to comply with the laws of the State of Pennsylvania. All the tracks and switching facilities of the iron works were conveyed to the railroad company, the stock of both the iron works and the railroad company being owned by the same corporation. The railroad company charged both the iron works and all other industries on the line \$2 per car for switching. The defendant made an allowance of 6c. per ton to other industries on the line down to July, 1909, but then cancelled all its absorption tariffs. It had never made any allowance on freight coming to the Crane Iron Works. Additional testimony was offered to show that the Crane Railroad Company was a common carrier.

Held, (Prouty, C.), (a) that in view of the decision on the main point it was not necessary to pass on the question as to whether the Crane Railroad was a common carrier;

(b) that the service performed by the Crane Railroad Company for the complainant was that of a plant facility, the expense of which should be borne entirely by the complainant and which no railroad under the guise of an absorption of switching charge, might lawfully sustain.

Complaint dismissed.

1148.—Montgomery Freight Bureau v. Louisville & N. R. Co.
et al. 17 I. C. C. Rep. 521. (Feb. 8, 1910.)

Complaint of unreasonable rates through Ohio and Mississippi River crossings to Montgomery, Ala., and of preference to Pensacola, Fla., and Mobile and Birmingham, Ala., by relative rates to such points.

Montgomery is 95 miles farther than Birmingham from the points of origin in question, but considerably nearer than Mobile or Pensacola. At the latter two points, however, the competition was much stronger, Mobile and Pensacola being situated on the Gulf. By reason of the postage stamp system of rates on the Alabama River from the mouth to Montgomery, Mobile merchants had a great advantage over those at Montgomery. It appeared that formerly rates to Montgomery and Birmingham had been the same, but that the advent of a new line to Birmingham had resulted in a reduction of rates to that point without any corresponding change as to Montgomery. As to certain rates to Montgomery, it appeared that combinations on Mobile were lower than the regular through rates.

Held, (Clark, C.), (a) that the competition at Pensacola and Mobile justified the lower rates to such points;

(b) that the different competitive conditions at Birmingham and the greater distance of Montgomery than Birmingham justified the relative rates to Birmingham and to Montgomery;

(c) that the combination rates on Mobile should in no case exceed the through rates.

No order entered for the present.

1149.—Sunnyside Coal Mining Co. v. Denver & Rio Grande R. Co. et al. 17 I. C. C. Rep. 540. (Feb. 8, 1910.)

Complaint of unreasonable rate on coal from Strong, Col., to Quinn and Cottonwood, S. Dak., and demand for reparation.

The part of the rate complained of was that from Rapid City, S. Dak., to Quinn and Cottonwood, distances of 65 and 76 miles. These rates were \$1.90 and \$2.20 respectively. Complainant contended that they should not exceed 85c. and 90c. It appeared that the defendants' road was very crooked with bad grades and many bridges and culverts, the cost of operation per ton mile being 17.42 mills. At the time of the shipment in question there was in effect a joint through rate between Strong and Quinn and Cottonwood lower than the combination rate, which, latter, however, complainant had chosen to avail himself of by shipping locally to Rapid City in each case.

Held, (Prouty, C.), (a) that although the rates in question were abnormally high, under the circumstances they were not unreasonable;

(b) that as complainant saw fit to ship locally to Rapid City he had no cause of complaint.

Complaint dismissed.

1150.—Tritch Hardware Co. v. Rutland R. Co. et al. 17 I. C. C. Rep. 542. (Feb. 8, 1910.)

Complaint of unreasonable rate on agricultural implements from Wallingford, Vt., to Denver, Col., and demand for reparation.

At the time of the shipment there was no joint through rate in effect between Wallingford and Denver. There was in effect a commodity rate of 27c. with a 30,000 lb. minimum from the Mississippi and Missouri Rivers plus 80c., with the same minimum, from the Missouri River to Denver. There was also in effect a third class rate, minimum 24,000 lbs., from the Mississippi and Missouri Rivers of 35c., and from the Missouri to Denver 80c., but the commodity tariff did not provide that either the class or commodity rate might be used according as one or the other might make the lower charge, this provision being subsequently incorporated in the tariffs. The commodity rate with a 30,000 lbs. minimum produced a less charge between the rivers than the class rate, but between the Missouri and Denver, the class rate being the same as the commodity rate, but with a lower minimum, would be the more advantageous. The shipments in question were rated at 30,000 lbs. from Mississippi River to Denver.

Held, (Prouty, C.), that reparation would be awarded on the charge which would have been exacted under a 24,000 lb. minimum.

1151.—Du Pont De Nemours Powder Co. v. Pennsylvania R. Co. et al. 17 I. C. C. Rep. 544. (Feb. 7, 1910.)

Complaint of discrimination against complainant in the ship-

ment of black powder from Montchanin, Del., through Chadd's Ford Junction, to points on the line of the Pennsylvania Railroad in Pennsylvania and Ohio.

Complainant's plant was located at Montchanin, Del., the only outlet being by a branch of the Philadelphia & Reading running to Chadd's Ford Junction, where connection was made with the Pennsylvania Railroad. Geographically, Montchanin was within what was known for rate-making purposes as Philadelphia Rate Basis Territory, but the Pennsylvania Railroad refused to allow it the common point rate, on the ground that powder was undesirable traffic unless the railroad participated in the transportation of the inbound material, which the Pennsylvania did not do here. The Pennsylvania charged its full local rate from Chadd's Ford Junction, resulting in a charge to complainant in excess of that to other Philadelphia common points by the amount of the local to Chadd's Ford Junction.

Held, (Knapp, Ch.), that the rate was unreasonable to the extent that it exceeded the Philadelphia common point rate, and that the latter rate should be applied to complainant's traffic.

No order for thirty days.

1152.—Morrisdale Coal Co. v. Pennsylvania R. Co. 176 Pa. 748.

C. C. E. D. Pa. (Feb. 5, 1910.)

Motion to dismiss, for want of jurisdiction, action for damages for discrimination in distribution of coal cars.

The alleged discrimination occurred during the period from 1902 to 1905, and resulted from the refusal by defendants to pro rate individual, and company and foreign fuel cars. This practice was altered January 1st, 1906, more than a year prior to suit brought, so that the action was one solely for damages.

Held, (J. B. McPherson, D. J.), (a) that the question as to whether a rate or practice produced an undue preference or an unjust discrimination was one of fact;

(b) that the wisdom or expediency of an order of the Commission issued under the power conferred on it, was not to be reviewed by the courts;

(c) that the Commission had exclusive original jurisdiction to award damages incurred as the result of a rate or practice in violation of the Act, even where such practice had been discontinued prior to the bringing of the suit.

Motion granted and action dismissed for want of jurisdiction.

1153.—Blankenship et al. v. Big Sandy & Cumberland R. Co. et al. 17 I. C. C. Rep. 569. (Feb. 8, 1910.)

Complaint of unreasonable rates between points on defendants' line.

Defendants' railroad was but 17 miles in length but was an inter-

state carrier running from Devon, W. Va., along Knox Creek, to Blackey, Va. The road was originally built by the Ritter Lumber Co., which owned practically all the stock. An investigation of its earnings showed that the latter were very large in proportion to the capital invested.

Held, (Lane, C.), (a) that defendants' rates and classifications were unreasonable and should be reduced as indicated;

(b) that through routes should be established by the Big Sandy & Cumberland Railroad with the Norfolk & Western to the end that traffic might move freely from one end to the other without the necessity of rebilling at the junction.

(c) that this did not, however, require the establishment of joint rates, it being sufficient to publish the local interstate rates as proportionals.

Order accordingly.

1155.—Henderson Elevator Co. et al. v. Illinois Central R. Co.
17 I. C. C. Rep. 573. (Feb. 14, 1910.)

Complaint of preference of Evansville, Ky., over Henderson, Ky., in refusal of proportional rates and transit privileges at Henderson, applicable at Evansville on shipments from Omaha, Neb., and Council Bluffs, Ia., through Henderson to Cairo and other Ohio River crossings, and demand for reparation.

Complainants were engaged in the grain business at Henderson. At the time of the shipment in question the tariffs did not permit transit privileges at Henderson similar to those in force at other Ohio River crossings on grain coming from Omaha and Council Bluffs, resulting in a charge to complainants 4c. in excess of what would have been charged had similar transit privileges been permitted. Defendant practically admitted the justice of the complaint.

Held, (Knapp, Ch.), that reparation should be awarded on the basis of the 4c. excess, on shipments proved, and defendant be required to maintain similar transit privileges at Henderson for two years.

1156.—Horst Co. v. Southern Pacific Co. et al. 17 I. C. C. Rep. 576. (Feb. 8, 1910.)

Complaint of unreasonable rate on barley from Porta Costa, Cal., to Milwaukee, Wis., and demand for reparation.

Complainant shipped certain barley from Porta Costa to Sacramento, Cal., consigned to himself, and subsequently, after sampling, he reshipped it to Milwaukee. He was charged the combination rate to Sacramento, the through rate to Milwaukee being 7c. less. This amount he claimed.

Held, (Cockrell, C.), that as there was no tariff provision permitting the diversion of grain in transit and reshipping at the balance of the through rate, complainant was not entitled to reparation.

Complaint dismissed.

1157.—Hinton Fruit & Produce Co. v. Chesapeake & O. Ry. Co. et al. 17 I. C. C. Rep. 578. (Feb. 17, 1910.)

Complaint of unreasonable rate on potatoes from east Virginia points to Hinton, W. Va., and demand for reparation.

The rate charged was 32½c. per 100 lbs. At the same time there was in effect a rate of 26c. to more distant points on the same line. The defendants contended that the lower rate at the more distant point was the result of competition, but it appeared that there was practically no different competition at the more distant points, the other lines to such points being very circuitous.

Held, (Cockrell, C.), that the circumstances and conditions did not appear to warrant the lower charge to the more distant points and reparation should be awarded on the basis of the 26c. rate.

Order accordingly.

1158.—Hellstrom v. Northern Pacific Ry. Co. 17 I. C. C. Rep. 580. (Feb. 17, 1910.)

Complaint of unreasonable rate on hemp from Pacific coast terminals to Bismarck, N. Dak., as compared to the rate to Stillwater, Minn., and Chicago, Ill., and demand for reparation.

The rate in question was 50c. per 100 lbs. for a distance of 1468 miles, whereas the rate through Bismarck to Chicago for 2375 miles was 55c. It appeared, however, that hemp came from the Philippines to the United States both through Pacific and Atlantic ports, the water charges to each being about the same, and this resulted in a proportionally low rate to Chicago.

Held, (Prouty, C.), that the competition at Chicago justified the relatively lower rate and as 55c. did not appear to be less than the cost of service.

Complaint dismissed.

1159.—East St. Louis Walnut Co. et al. v. St. Louis S. W. Ry. Co. of Texas et al. 17 I. C. C. Rep. 582. (Feb. 8, 1910.)

Complaint of unreasonable rate on walnut logs from Weiner and St. Francis, Ark., and intermediate points to East St. Louis, Ill., and demand for reparation.

The rates in question were from Weiner 17½c., and from St. Francis 16½c. The rate to East St. Louis was 1½c. higher than to St. Louis. In *East St. Louis Walnut Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 14 I. C. C. Rep. 575, the Commission held that rates higher than 11½c. and 13c. from Newport, Ark., to East St. Louis were unreasonable. The rate now in effect between these points was 11½c. The conditions of transportation to St. Louis and East St. Louis did not disclose any valid reasons why higher rates should be in effect to the latter than to the farther. Certain of the shipments were made during the early part of 1906. In the original complaint, filed March 10, 1908, there was no mention of

reparation, but by an amendment in September, 1908, reparation was asked.

Held, (Lane, C.), (a) that the rates in question were unreasonable to the amount that they exceeded 11½c. per 100 lbs.;

(b) that no valid reason appeared why higher rates should be charged to East St. Louis than to St. Louis, but no reparation would be awarded on account of this circumstance;

(c) that no reparation would be awarded on account of shipments on which freight was paid more than two years prior to the supplemental petition demanding reparation;

(d) that an order would be issued requiring the maintenance of the 11½c. rate for the future, but no order for reparation at the present time, until the proper figures were placed before the Commission.

1160.—Blodgett Milling Co. v. Chicago, M. & St. P. Ry. Co. et al.
17 I. C. C. Rep. 587. (Feb. 17, 1910.)

Complaint of unreasonable rate on buckwheat from Gobles, Mich., to Janesville, Wis., and demand for reparation.

The rate exacted was 21½c. This was a through rate and was in excess of the combination rate on Chicago of 14c. Subsequent to the shipment in question the through rate was reduced to 14c. and defendants admitted the justice of the complaint.

Held, (Lane, C.), that reparation would be awarded on the basis of the 14c. rate.

1161.—Black Horse Tobacco Co. v. Illinois Central R. Co. et al.
17 I. C. C. Rep. 588. (Feb. 17, 1910.)

Complaint of unreasonable rate on leaf tobacco in hogsheads from Kentucky and Tennessee points to Monterey, Mex., via Laredo, by reason of excessive minimum weight.

The shipments in question were carried by American lines to Laredo, from Laredo to Monterey by the Mexican Railroad. The rate was a joint through rate, the divisions of which did not appear on the tariffs on file and which were not concurred in by the Mexican Railroad, nor was the latter a party to these proceedings. The minimum weight specified was 33,069 lbs. Subsequently, this minimum was reduced to 27,558 lbs. It appeared that 33,000 lbs. could not be loaded into the cars. The shipments in question were all in carloads exceeding 27,558 lbs., but each less than 33,069 lbs., and complainant contended that he should have been charged on the actual weight. It appeared that the Louisville & Nashville had originally been named as a party to the tariff in question, but had not concurred therein until after the tariff had been altered by the roads originally filing it, and that the Louisville & Nashville had not concurred in the alteration, so that during the time of the shipments in question there was no joint through rate in effect be-

tween the points of origin and destination, established in accordance with the rules of the Commission.

Held, (Prouty, C.), (a) that although the Commission had no authority to establish a rate of transportation in Mexico nor to order the maintenance of a rate for the future from a point in the United States to a point in Mexico, yet the Commission might require the American carriers to cease and desist from continuing to apply a joint through rate or any rule, regulation or practice in connection with that joint through rate and might, if such rate had been voluntarily maintained, inquire whether it was reasonable and if found unreasonable award damages in that behalf;

(b) that although the American carrier might, if it saw fit, name a rate to the Mexican border and in that event the Commission could deal only with the service up to the Mexican line, yet where, instead of adopting that course the American carriers established a joint charge for the entire service from the United States to Mexico, giving no information as to the division of the through rate, the Commission might examine the unreasonableness of the charge;

(c) that where a carrier filed and posted a tariff naming joint rates from stations on its line to destinations on a connecting line, in which tariff the connecting line did not concur, the initial line thereby became responsible to the shipper under the tariff;

(d) that both the Louisville & Nashville and the roads originally filing the tariff were responsible to the complainant jointly and severally for the charges over what would have been reasonable;

(e) that the 33,069 lbs. minimum was unreasonable to the amount that it exceeded 27,558 lbs., and reparation should be awarded on the basis of the charge which should have been exacted on the latter minimum.

Reparation awarded accordingly, without any order for the future.

1162.—**Fuller & Co. et al. v. Pittsburgh, Chartiers & Youghiogheny Ry. Co. et al.** 17 I. C. C. Rep. 594. (Feb. 17, 1910.)

Complaint of unreasonable rate on oil from New York, Cleveland and Minneapolis to San Francisco and Seattle, and demand for reparation.

The rate exacted was \$1, the shipments moving between January 1st and June 1st, 1909. Prior to January 1st the rate had been 90c. and on June 1st that rate was restored. The defendants insisted, however, that the 90c. rate had been forced originally by water competition and that it was found impossible to maintain the \$1 rate on trial, owing to such competition. The evidence of the defendants tended strongly to support its contention.

Held, (Prouty, C.), that since the 90c. rate appeared to be a competitive one, it could not be taken as a standard to measure the reasonableness of a voluntary rate.

Complaint dismissed.

1163.—Virginia-Carolina Chemical Co. v. St. Louis, I. M. & S. R. Co. et al. (3 cases). 18 I. C. C. Rep. 1, 3, 5. (Feb. 17, 1910).

Complaint of unreasonable rate on fertilizer from Memphis, Tenn., to Arkansas points, and demand for reparation.

The original complaint did not claim reparation, and subsequently leave was asked to amend it to include demand for reparation.

Held, (Prouty, C.), (following Virginia-Carolina Chemical Co. v. St. Louis South Western Ry. Co.), (885) (a) that the rates in question were unreasonable and should be reduced to figures specified;

(b) that reparation would be awarded on due proof, but the date of the filing of the amendment was to be regarded as the date of the filing of the claim for reparation, should any question arise under the Statute of Limitations.

Order accordingly.

1164.—United States v. Denver & R. G. R. Co. 18 I. C. C. Rep. 7. (Jan. 11, 1910).

Complaint of improper demurrage charges on cement at Thistle Junction, Utah.

Prior to May, 1906, the Reclamation Service of the Government began the prosecution of an irrigation project at Strawberry Valley, Utah. The nearest station was Thistle Junction, 6½ miles away, and in order to avoid delay and expense, the Government and the railroad jointly constructed a switch or spur to a point near the work, leaving the main line at a mile post 2½ miles from Thistle Junction. The switch became the exclusive property of the railroad. The Government gave orders to send but two and sometimes four cars a day from Thistle Junction to the spur, as it could not unload more than that. The demurrage in question accrued on the cars held at Thistle Junction. The demurrage rules on file provided in effect for the exaction of demurrage charges only when cars were actually placed on delivery tracks except when such tracks were full, or for "any other reasons beyond the control of the carrier." The railroad sought to justify the exaction of the demurrage in question on the cars at Thistle Junction on the ground that the order by the Government for but two to four cars a day amounted to a "reason beyond the control of the carrier" so as to justify the collection of the demurrage, although these cars were not in fact held on the delivery track. The demurrage had not in fact been paid.

Held, (Knapp, Ch.), (a) that the tariffs did not authorize the exaction of the demurrage in question;

(b) that as the demurrage had not in this case been actually paid by the carrier, no order was necessary.

Prouty, C., dissented. Dissenting opinion.

1165.—Laning-Harris Coal & Grain Co. v. Chicago, B. & Q. R. Co. 18 I. C. C. Rep. 11. (Feb. 7, 1910).

Complaint of unreasonable rate on anthracite coal from Chicago, Ill., to Akron, Colo., and demand for reparation.

From 1901 to 1907 the rate in question had been \$6.70 per ton, minimum 30,000 lbs., the latter minimum having been increased in 1902 to 40,000 lbs. No through rate was in effect during 1907, but in January, 1908, the present rate of \$8 per ton, minimum 40,000 lbs., was established. It appeared that less rates were in force in the region for similar distances.

Held, (Clements, C.), (a) that \$7 was a reasonable rate and should be observed for the future;

(b) that reparation on past shipments should be awarded.

Order accordingly.

1166.—Stone-Ordean-Wells Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 13. (March 8, 1910).

Complaint of unreasonable rate on canned goods from San Jose, Cal., to Roundup, Mont., via Harlowton, Mont., and demand for reparation.

The rate was constructed by adding the rate of \$1 to Harlowton to the local rate of 24c. from Harlowton to Roundup, the former part alone being complained of. The rate on dried fruit was lower than that on canned goods.

Held, (Prouty, C.), (a) that the \$1.10 rate from San Jose to Harlowton was unreasonable in so far as it exceeded \$1;

(b) that reparation should be awarded accordingly.

See also 937 and 1167.

1167.—Stone-Ordean-Wells Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 15. (March 8, 1910).

Complaint of unreasonable rate on dried fruit from Fresno, Cal., to Roundup, Mont., via Harlowton, Mont., and demand for reparation.

The rate complained of was that up to Harlowton, a combination rate on Lathrop, Cal., of \$1.37½. Complainant contended that this rate should not exceed \$1.10, based on the decision by the Commission in *Stone-Ordean-Wells Co. v. Southern Pacific Co.* (937).

Held, (Prouty, C.), (a) that the rate up to Harlowton was unreasonable in so far as it exceeded \$1.10;

(b) that complainant was entitled to reparation accordingly;

(c) that as there was no basis on the record to determine the division of the rate amongst the various carriers, no order would be entered for the present.

See also 937 and 1166.

1168.—Williams v. Wells Fargo & Co. 18 I. C. C. Rep. 17. (March 8, 1910).

Complaint of alleged illegal practice by defendant in transport-

ing small packages in competition with the United States mail.

Held, (Prouty, C.), (a) that the Commission had no authority to establish, in the first instance, rates of the defendant company;

(b) that in handling packages of weight of less than 4 lbs., the defendant did not transgress any provision of the Act which the Commission was empowered to administrate.

Complaint dismissed, a copy of the record being transmitted to the Attorney General of the United States.

1169.—Acme Cement Plaster Co. v. Chicago, G. W. Ry. Co. et al. 18 I. C. C. Rep. 19. (March 8, 1910).

Complaint of unreasonable rate on cement plaster from Gypsum, and Council Bluffs, Ia., to North and South Dakota points; of discrimination in rates in favor of Gypsum against Council Bluffs, and in favor of Rapid City, Ia., as against Council Bluffs and Gypsum; and demand for reparation.

As regards the reasonableness of the rates in question, it appeared that the charges were considerably less than those on lumber and wheat, about the same as those on brick, and about one-half those on cattle. Rates, however, to some stations between the Missouri and Rapid City were considerably in excess of this average. As regards discrimination against Council Bluffs, it appeared that defendants were anxious to protect mills on their own line at Gypsum and Rapid City, and for this reason imposed from Council Bluffs charges higher than normal. Rates on cement from Gypsum exceeded rates on lumber, wheat and brick, and were only slightly lower than cattle rates. Lumber loaded easily to 50,000 and 60,000 lbs. The minimum in question was 60,000 lbs. It appeared that there were two kinds of plaster, white and brown, the former being manufactured at Gypsum and the latter at Laramie. White plaster spoiled more quickly than brown, so that the higher minimum was to the advantage of the brown plaster manufacturer, and also in favor of the large dealer, who could dispose of a large cargo more quickly than the small dealer.

Held, (Prouty, C.), (a) that the rates from Gypsum were reasonable except as to points between the Missouri and Rapid City, which latter should be reduced to figures named;

(b) that the defendants were not justified in establishing arbitrary rates for the benefit of mills on their own line;

(c) that the cement rates from Council Bluffs as compared with those from Gypsum were unreasonable and should be reduced to figures given;

(d) that the minimum should be reduced to 30,000 lbs., and that similar minimum privileges be allowed to all the points in question.

Order accordingly, establishing rates found to be reasonable, but no order issued for the present as to the minimum. Reparation denied.

1171.—Peale, Peacock & Kerr et al. v. Central R. Co. of N. J.
18 I. C. C. Rep. 25. (March 7, 1910).

Complaint of unreasonable demurrage regulations at tide-water ports (Elizabeth, Port Johnson, Port Liberty, Communipaw, N. J.,) and demand for reparation.

Prior to May 1st, 1907, when the demurrage regulations complained of became effective, defendant used a system of embargoes, and the complainants appeared to prefer this system to the demurrage rules subsequently adopted. These regulations provided that after five days, on an average computed for the calendar month, demurrage at the rate of \$1 per day should be charged. Complainants alleged that the rules discriminated against them in favor of shippers of larger tonnage, who could take better advantage of the average agreement in effect; in favor of lake ports where no demurrage rules were in effect; and of other ports where the free time was greater and the rules more liberal; and in favor of shippers over lines operating under embargo rules or without demurrage rules. The complainants asked for the reinstatement of the embargo regulations or of the modification of the demurrage regulations to increase the free time to seven days computed on the average yearly basis with a provision for \$2 per day demurrage on a straight fifteen-day basis. With regard to certain of the demurrage demanded by the carrier, complainants based their refusal to pay on the ground that none of the cars detained had been owned by the defendant. They also prayed that the Commission enjoin the collection of certain demurrage. On certain coal, it appeared that an embargo had been laid by the defendant before accrual of the demurrage, but after the removal of the embargo the coal had been detained at the pier because of the scarcity of vessels in which to load it. It appeared that the five-day free-time rule had been adopted by defendant after a careful investigation as to the average time of detention at the ports in question. It was contended by complainants that as the necessity for cars in which to store the coal at the piers was greater in the slack season in summer than in winter, it was reasonable to compute the demurrage on a yearly average instead of monthly. Complainants also relied on the fact that in regard to certain shipments it did not have notice of the promulgation of modified demurrage rules in force at the time of the accrual of the demurrage. It appeared that defendant's facilities at the terminals were sufficient to handle considerable more traffic than that at present handled.

Held, (Clark, C.), (a) that the fact that certain of the cars in question were not owned by the defendant did not affect defendant's right to collect demurrage for their detention;

(b) that the embargo was not what caused the accrual of demurrage and did not affect defendant's right to collect the same;

(c) that it was not reasonable to assess demurrage on a yearly

basis and to require defendant to do so would in a great measure nullify the purpose of the assessment of demurrage;

(d) that "in the framing of demurrage regulations the object sought to be secured is the prompt release of cars;"

(e) that the Commission had jurisdiction to determine the reasonableness or discriminatory nature of the regulations herein involved;

(f) that the fact that complainants did not have notice of the proposed demurrage regulation in no way lessened their duty to observe the lawful tariffs;

(g) that the Commission had no power to issue an order enjoining the collection of demurrage charges *pendente lite*;

(h) that the Commission had no power to order the carrier to place an embargo on a particular shipment;

(i) that the fact that defendant had facilities for handling more traffic did not require it to relax its demurrage regulations;

(j) that the demurrage regulations in question were reasonable;

(k) that for the purpose of computing demurrage a car should be considered as having arrived at 7 A. M. on the day succeeding the day on which it arrived at the yards, and the day released should be considered as on the date on which the car was unloaded or on which a vessel registered at the pier was ready to load that consignee's shipments, where consignee had sufficient coal in the yard to load a vessel and had ordered the same done;

(l) that the demurrage regulations in question did not discriminate unduly against complainants in favor of shippers at other points and complainants were entitled to no reparation.

Order accordingly.

See also 1172.

1172.—Lynah & Read et al. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 38. (March 7, 1910).

Complaint of unreasonable demurrage rules on coal for water transshipment at Locust Point (Baltimore) and Curtis Bay, Md., and discrimination in favor of traffic at Philadelphia, Pa., and St. George, Staten Island, N. Y.

The free time at Locust Point and Curtis Bay was five days, computed on a monthly average, or twelve days straight time. The date of arrival was computed from the time the vessel registered at the pier office. Where a car changed ownership after reaching destination and orders were given for delivery to the original consignee, the free time on such car was not transferred to the new owner. Complainants asked that the time be increased to seven days on the average or fifteen days straight; that the average on all defendants' tide-water ports be consolidated; that the demurrage be computed yearly; that the time begin to run when the vessel was actually at the pier for dumping or when notice was received by the consignee

of the arrival at the yards; that free time should follow a car on change of consignee or destination; and that delays to vessels in reaching piers and delays in transit should be considered in the allowance of free time. It appeared that at Philadelphia seven and fifteen days were allowed. Defendants contended that the competition at Philadelphia made the latter necessary.

Held, (Clark, C.), (a) that the free time allowed at Locust Point and Curtis Bay was not unreasonable *per se*;

(b) that it was not reasonable to require the average detention at all defendants' tide-water ports to be consolidated since this would negative the primary object of demurrage, the latter being a penalty for delay to equipment;

(c) that it was not reasonable to require the computation of demurrage on an average yearly plan;

(d) that unreasonable delays in transporting coal to the ports should not cause demurrage against consignees;

(e) that consignees' failure to have vessels ready to receive coal should not relieve them from demurrage charges;

(f) that where a shipper was operating under an average agreement, free time should not follow a car on change of ownership, but where he was operating under a straight demurrage time, the demurrage should follow the car into the hands of the transferee;

(g) that the points decided in *Peale, Peacock & Kerr v. Central R. R. of New Jersey*, (1171) were hereby affirmed;

(h) that the conditions at Philadelphia were substantially similar to those at Locust Point and Curtis Bay and the imposition of more stringent demurrage regulations at the latter points was an undue preference of shippers at Philadelphia;

(i) that reparation should be awarded on the basis of the foregoing findings.

Order accordingly.

See also 1171.

1173.—*Anderson-Tully Co. v. Chicago, R. I. & P. Ry. Co. et al.*
18 I. C. C. Rep. 48. (March 14, 1910).

Complaint of unreasonable rate on egg-case material from Memphis, Tenn., to Woodward, Okla., and demand for reparation.

The shipments in question consisted of box lumber or parts of egg boxes tied in bundles, but not manufactured further than to cut to length. The rate exacted was 60c. per 100 lbs., minimum 24,000 lbs., applicable to egg case material. The rate on box lumber at the time of this shipment had been 39c. Since the shipment, the latter was reduced to 29c. and made applicable to egg case lumber.

Held, (Cockrell, C.), (a) that the egg box material differed in no substantial manner from other box lumber and the box lumber rate should have been applied to it;

(b) that a rate of 29c. would have been reasonable as applied to the shipment in question and should be continued for the future;

(c) that reparation should be awarded accordingly.

1174.—Liverpool Salt & Coal Co. et al. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 51. (March 14, 1910).

Complaint of unreasonable proportional rate on salt from West Virginia points to Lynehburg and Roanoke, Va., destined for coast line points.

The rate in question had been advanced from 8c. to 12c. shortly before the shipments in question. The defendants sought to justify it on the ground that the 8c. rate was not sufficiently remunerative.

Held, (Clements, C.), (a) that the 12c. rate was unreasonable to the amount that it exceeded 10c. on a 40,000 lb. minimum, and should be reduced to that figure.

Order accordingly.

1175.—Commercial Club of Omaha v. Southern Pacific Co. et al. 18 I. C. C. Rep. 53. (March 7, 1910).

Complaint of unreasonable rate on lima beans from California points to Omaha, Neb., and demand for reparation.

The rate exacted was 85c. per 100 lbs. From January, 1900, to October, 1903, the rate had been 75c. with a 24,000 or 30,000 lb. minimum. On the latter date, the minimum had been increased to 40,000 lbs. without objection by shippers, and this minimum and the 75c. rate were kept in effect until January, 1909, when the rate was advanced to 85c. This rate extended to all points east of Omaha. In June, 1909, the 75c. rate was restored to Omaha and Texas points, and a few other localities. The shipments in question moved in February, March and April, 1909. The defendants sought to justify the lower rate to the Gulf ports on the ground of competition of navy beans through such ports, and on the ground that Omaha and Missouri crossings should take the Texas rate. It appeared, however, that there was little competition between navy beans and lima beans and such as there was did not extend as far north as Omaha. In the argument, attention was directed to the question of the burden of proof.

Held, (Harlan, C.), that in view of the facts, the 85c. rate was unreasonable in so far as it exceeded 75c. and reparation should be awarded on this basis.

Order accordingly.

1176.—Crombie & Co. et al. v. Atchison, T. & S. F. Ry. Co. 18 I. C. C. Rep. 57. (March 7, 1910).

Complaint of unreasonable through class rates from Albuquerque, N. Mex., to El Paso, Tex., and demand for reparation.

The basis of the complaint was the fact that the rates in question exceeded the combination of local rates on Las Cruces, an intermediate point. Defendant was willing to put in force a through rate not exceeding the combined locals and to award reparation on this basis.

Held, (Harlan, C.), that the case should be transferred to the informal docket with authority to settle the overcharges as above.

Order accordingly.

1177.—Eschner v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 60. (March 7, 1910).

Complaint of unreasonable regulation refusing the holders of exchange orders and mileage books the privilege of checking baggage through or securing through sleeping accommodations on a journey through Pittsburgh.

The defendants issued between points west of Pittsburgh an interchangeable mileage exchange order entitling the holder to 1000 miles of transportation over the lines west of Pittsburgh, on proper presentation of the order, at 2c. a mile. They also issued 1000 mile tickets at 2c. a mile over the lines east of Pittsburgh but the tariffs provided specifically that holders of exchange mileage and mileage books might not combine the two on a journey through Pittsburgh as a warrant for checking baggage or for buying sleeping accommodations.

Held, (Harlan, C.), (a) that the language in the Act permitting the sale of mileage tickets is entirely permissive and gives the Commission no authority to require the sale of transportation in this form;

(b) that the issuance of mileage tickets was in the nature of a privilege which the carrier might withhold or to which it might attach conditions and restrictions at its pleasure so long as no undue discrimination or other violation of the Act was involved.

Complaint dismissed.

1178.—Maldonado & Co. v. Ferrocarril De Sonora et al. 18 I. C. C. Rep. 65. (March 7, 1910).

Complaint of unreasonable charge on garbanzo or dried peas from Guaymas, Mex., to Philadelphia, Pa., and demand for reparation.

The shipment in question weighed 66,000 lbs., and complainant ordered a 60,000 lb. car which was large enough to hold the shipment. The defendants' regulations permitted loading 10 per cent. in excess of the marked capacity. Defendants, however, furnished two 40,000 lb. cars and the total charges collected on a basis of 80,000 lbs. resulted in a charge of \$105 in excess of that which would have been exacted on the basis of actual weight. Defendants' tariffs contained no two-for-one rule. Such a rule was, however, subsequently established.

Held, (Harlan, C.), that reparation should be awarded in the sum of \$105 with interest, against the Southern Pacific Company, the other carriers to share in the damages in proportion to their agreed divisions of the joint through rate.

Order accordingly.

1179.—Memphis Freight Bureau v. St. Louis S. W. Ry. Co. 18 I. C. C. Rep. 67. (March 7, 1910).

Demand for reparation on account of unreasonable charge on cotton-seed meal and hulls from Little Rock, Ark., to Memphis, Tenn.

The rate exacted was 10c. and reparation was asked on the basis of a 6c. rate. An 8c. rate was subsequently established for the same service. Defendant pleaded the Statute of Limitations, the shipment having moved in April, 1906, and the formal complaint filed August, 1909. The complaint, however, was presented informally in August, 1906, but it was contended by defendant that the informal complaint did not present a cause of action or allege a violation of the Act, and, therefore, could not be relied on to toll the Statute. The informal complaint, however, described the shipments, the rate exacted and what would have been a reasonable rate, and contained copies of claim papers.

Held, (Harlan, C.), (a) that the informal complaint was sufficient to toll the Statute;

(b) that the 8c. rate was reasonable and reparation should be awarded on that basis.

Order accordingly.

1180.—Tritch Hardware Co. v. Chicago, R. I. & P. Ry. Co. 18 I. C. C. Rep. 71. (Jan. 4, 1910).

Complaint of unreasonable rate on agricultural implements from Omaha, Neb., to Denver, Colo.

Prior to July, 1907, the articles in question had been carried at a third-class rate of 80c. per 100 lbs. with a minimum of 20,000 lbs. On that date, the same commodity rate was put in effect, with a minimum of 30,000 lbs., the latter superseding the class rate. The shipment moved in January, 1908. In January, 1909, a tariff was filed providing for the alternative use of the class and commodity rate. The shipment in question proceeded under the commodity rate, which resulted in a charge of \$40 in excess of that which would have been exacted at the class rate.

Held, (Harlan, C.), that reparation to the amount of \$40 should be awarded.

1181.—Greater Des Moines Committee v. Chicago, M. & St. P. Ry. Co. et al. 18 I. C. C. Rep. 73. (Feb. 8, 1910).

Complaint of unreasonable rates from Des Moines, Ia., to points in Western Minnesota, and in North and South Dakota.

No complaint was made of any specific rates and no specific commodities were named. The purpose of the complaint was to have rates from Des Moines established at percentages of the Chicago rate to the same points, based on mileage. Complainants conceded that as a practical matter it was most difficult to adjust the rates in accordance with their demands.

Held, (Cockrell, C.), (a) that although distance was important, it could not be the determining factor in all cases in fixing rates;

(b) that the Commission was bound in passing upon so important a matter to consider the whole field and the effect the rate would have on other points;

(c) that under the evidence, the complaint had not been sustained nor facts shown to justify the Commission in changing the present rate adjustment;

(d) that certain discrepancies in the rates investigated voluntarily should be adjusted.

Complaint dismissed.

Lane, C., dissented on the ground that under the Act the Commission was not justified in dismissing a complaint because the complainant had not made out a case, it being the duty of the Commission in all cases to make independent investigation.

1182.—Rainey & Rogers v. St. Louis & S. F. R. Co. 18 I. C. C. Rep. 88. (March 14, 1910).

Complaint of unreasonable rate on coal from Carbon Hill district, Ala., to New Albany, Miss., and demand for reparation.

The rate in question was \$1.10. Complainant relied on the fact that an 80c. rate was in effect to a point 26 miles less distant and also that the rate to Memphis 79 miles more distant was \$1. Competitive conditions at these points, however, were different from those at Carbon Hill.

Held, (Knapp, Ch.), that under the facts, a rate of 95c. was reasonable for the future and reparation should be awarded accordingly.

1183.—Wabash Coating Mills v. Wabash R. Co. et al. 18 I. C. C. Rep. 91. (March 14, 1910).

Complaint of unreasonable rate on wood-pulp board from Wabash, Ind., to St. Louis, Mo., and demand for reparation.

The rate exacted was 11½c. Fourteen months after the shipment in question this rate was reduced to 9c. Defendants admitted the facts alleged and were willing to make the refund.

Held, (Knapp, Ch.), (a) that the voluntary reduction of a rate did not in itself warrant the inference that the former rate was unreasonable;

(b) that this principle was applicable though the carrier was willing to make the refund but did not admit the unreasonableness of the rate exacted.

Complaint dismissed.

1184.—Donahue v. Chicago, M. & St. P. Ry. Co. et al. 18 I. C. C. Rep. 92. (March 14, 1910).

Demand for reparation for misrouting corn from Dawson, Ia., to Trevor, Wis.

It appeared that the route over which the shipment proceeded

was that designated by the shipper, although a route commanding a less rate was available.

Held, (Knapp, Ch.), that where a shipper gives instructions to forward goods by a particular route, the carrier is relieved of the duty of ascertaining whether the goods could be forwarded via another route at a lower rate.

Complaint dismissed.

1185.—Barnum Iron Works v. Cleveland, C., C. & St. L. Ry. Co. et al. 18 I. C. C. Rep. 94. (March 14, 1910).

Demand for reparation on account of alleged unreasonable charge on iron fences from Brighton, O., to Tombstone, Ariz.

In June, 1908, complainant had submitted a bid to furnish an iron fence in Tombstone, based on a through rate of \$1.94 per 100 lbs. with a minimum of 30,000 lbs., this being the rate and minimum then in effect. This bid was not accepted until September, 1908, and the shipment not made until November of that year. In the meantime, the minimum had been raised to 36,000 lbs. No evidence was brought forward as to the unreasonableness of the rate or regulation.

Held, (Clements, C.), that there was nothing to show that the rate or minimum was unreasonable or discriminatory at the date of the shipment, or to afford a lawful basis for reparation.

Complaint dismissed.

1186.—Germain Co. v. Philadelphia, B. & W. R. Co. et al. 18 I. C. C. Rep. 96. (March 14, 1910).

Demand for reparation on account of the exaction of alleged unreasonable demurrage charges at Washington, D. C., on goods shipped from Salem, S. C.

The cars in question had been consigned by complainant to itself and it had notified defendants to deliver them to a certain party. The latter had refused to receive the shipments for the time being. After three weeks' delay, defendants advised complainant of the situation. The basis of the complaint was that defendants should have notified complainant at once of the consignee's delay in accepting. It appeared that the defendants ordinarily did this in case of absolute refusal but not in case of delay, unless the latter was protracted.

Held, (Clements, C.), that the Commission found no breach of duty under the Act on the part of defendants.

Complaint dismissed.

1187.—Greater Des Moines Committee v. Chicago G. W. Ry. Co. et al. 18 I. C. C. Rep. 98. (Feb. 8, 1910).

Complaint of undue preference of St. Paul, Minneapolis, St. Louis, St. Joseph and Kansas City over Des Moines.

From the evidence it did not appear that the rates involved were unduly preferential to the above points.

Held, (Cockrell, C.), (a) that under the Act, complainant necessarily must prove by competent evidence that the rates complained of are unlawful under the Act, or present to the Commission facts sufficiently clear and strong to justify the Commission in making an investigation of its own motion in the public interest;

(b) that complainant had not satisfied the above requirements in the present case.

Complaint dismissed.

1188.—Acme Cement Plaster Co. v. Chicago & N. W. Ry. Co. et al.
18 I. C. C. Rep. 105. (March 8, 1910).

Complaint of unreasonable rate on cement plaster from Laramie, Wyo., to points on the Niobrara branch of the Chicago & North Western Railway when coming from points beyond Norfolk, Neb., and demand for reparation.

The Niobrara branch was 154 miles long and was rather expensive in construction. Complainant contended that in fixing rates on this branch, it must be considered a part of the Chicago & North Western system without reference to the operating expenses on the particular branch. Cement plaster appeared to be particularly desirable traffic, loading heavily and being subject to little risk. There were no joint rates in effect, the shipments moving under through billings on combination rates on Norfolk, Neb.

Held, (Prouty, C.), that the rates in question should be reduced to figures named, but no reparation should be awarded.

Harlan, C., dissented on the ground that the opinion of the majority assumed that when through rates on a commodity moving between interstate points were attacked as unreasonable, it was sufficient to show merely that part of the through charges was unreasonable without proof that the entire charge was excessive.

1189.—Lauer & Son v. Southern Pacific Co. et al. 18 I. C. C. Rep. 109. (March 14, 1910).

Demand for reparation on shipments of hardware and other commodities from California points to Likely and Alturas, Cal.

Held, (Knapp, Ch.), that under the facts presented, complainant's claim for reparation had not been substantiated.

Complaint dismissed.

Clements, Prouty, and Lane, CC., dissented.

See also 1139.

1190.—Jennison Co. et al. v. Great Northern Ry. Co. et al. 18 I. C. C. Rep. 113. (March 15, 1910).

Complaint of preference of Buffalo millers over those at Minneapolis, Minn., by unreasonable rail-lake-and-rail rate on flour from Minneapolis to New York as compared to the rate on wheat to Buffalo plus the flour rate from Buffalo to New York.

Prior to 1898, when the lake lines were independent of the rail

lines, and rail-lake-and-rail rate from Minneapolis to New York on flour averaged about 18c., while the all-rail rate was 23c., a differential of 5c. in favor of the rail-lake-and-rail rate. In 1898, the railroads had secured control of most of the lake lines and this differential was then narrowed to 3c. by increasing the rail-lake-and-rail rate, and in April, 1902, after the railroads had completed their control of the lake lines, the rail-lake-and-rail rate was again increased 1c. narrowing the differential to 2c. The output of the Minneapolis mills had steadily decreased, while that of the Buffalo mills had steadily increased. The rail rate on flour from Minneapolis to Duluth was about the same as that on wheat and this was also true of the rate from Buffalo to New York; but for the transportation by the lake, the rate on flour exceeded that on wheat by 4c., although the cost of transporting flour by water was but 2c. more than that for transporting wheat. No complaint was made that the flour rate from Minneapolis to New York was unreasonable *per se*. A great many tramp steamers operated between Duluth and Buffalo, greatly lowering the rate on wheat. The facilities for loading and unloading flour at Duluth and Buffalo were controlled by the rail lines so that apparently the tramp steamers could not well handle flour.

Held, (Clark, C.), (a) that allowing for the difference in cost of transportation, approximately equal rates should be charged on flour and on the manufactured products thereof, since this would tend to equalize conditions at all points at which milling enterprises might exist;

(b) that under the circumstances, the flour rate, rail-lake-and-rail from Minneapolis to New York of 23c. was unreasonable, in so far as it exceeded 21½c. and should be reduced to that figure for the future.

Order accordingly.

1195.—*Wheeling Corrugating Co. v. Baltimore & O. R. Co. et al.* 18 I. C. C. Rep. 125. (April 4, 1910).

Complaint of unreasonable rate on iron roofing from Wheeling, W. Va., to Nowata, Okla., and demand for reparation.

The portion of the rate from the Mississippi River to Nowata, was a commodity rate of 45c. per 100 lbs. At the same time there was in effect a fifth-class rate of 43c. per 100 lbs.

Held, (Cockrell, C.), that while it did not necessarily follow that a commodity rate must be lower than a class rate, in the present case the 45c. rate was unreasonable to the extent that it exceeded 43c. and reparation should be awarded accordingly.

1196.—*Okerson v. Pennsylvania R. Co. et al.* 18 I. C. C. Rep. 127. (April 4, 1910).

Complaint of unreasonable rate on agricultural lime from English-town, N. J., to Frederick Road, Md., and demand for reparation.

The rate exacted was the class rate of 17c. per 100 lbs., minimum 36,000 lbs. There had previously been in effect a distance rate applicable to this haul of \$1.60 per ton, and subsequently there was established a commodity rate of \$1.65 per ton. Frederick Road had been omitted from the tariff by an oversight and defendants were willing to make reparation.

Held, (Cockrell, C.), that reparation should be awarded on the basis of the \$1.65 rate.

Order accordingly.

1197.—*Continental Lumber & Tie Co. et al. v. Texas & P. Ry. Co. et al.* 18 I. C. C. Rep. 129. (April 4, 1910).

Complaint of unreasonable rates on oak ties from Texas points to Douglas, Ariz., and demand for reparation.

For the portion of the journey, up to El Paso, Tex., the rate charged was 25c. per 100 lbs. Defendants denied that any through rate was in effect on oak timber. There was, however, in effect a proportional rate up to El Paso on traffic destined to Arizona and New Mexico points of 18c. per 100 lbs. on pine lumber, pine cross ties, etc. Defendants contended that a different charge was proper on oak timber and ties from that on pine.

Held, (Cockrell, C.), that while rates on ties should not exceed those on lumber of the same class and description of wood, in the present case the rates exacted were not unreasonable.

Complaint dismissed.

1198.—*Cressey & Co. v. Chicago, M. & St. P. Ry. Co. et al.* 18 I. C. C. Rep. 132. (April 4, 1910).

Demand for reparation on account of misrouting of freight from Webster, S. Dak., to Manchester, N. H.

The shipper routed the freight originally "c. o. Lehigh Valley Transportation Company, Milwaukee, via Harlem River." On arrival at Milwaukee, it was found impossible to forward the freight by the Lehigh Valley Transportation Co., and shipper was communicated with, resulting in orders to forward via the Reading Despatch. The carrier's agent, however, failed to include "Harlem River" in the new routing instructions. This resulted in an extra freight charge of \$52, a reconsignment charge of \$2 and demurrage amounting to \$23, the latter being incurred during the correspondence between the shipper and the carrier during the last stage of the journey.

Held, (Cockrell, C.), that while the Commission would not ordinarily include demurrage charges in the adjustment of misrouting claims, this particular case was not covered by such ruling and reparation should be awarded to the amount of \$77.

Order accordingly.

1199.—*Loftus v. Pullman Co. et al.* 18 I. C. C. Rep. 135. (March 15, 1910).

Complaint of unreasonable sleeping car rates between St. Paul, Minn., and Chicago, Ill., Superior, Wis., Seattle, Wash., Fargo, N. Dak., and Grand Forks, N. Dak., and of discrimination in charging the same rate for an upper as for a lower berth.

The complainant showed the cost of building Pullman cars and also the fact that the earnings of the Pullman Company were very large.

Held, (Lane, C.), (a) that the rates in question were unreasonable to the amounts specified and should be reduced accordingly;

(b) that the upper berth rates were unreasonable in comparison with those for lower berths and should be reduced to about 75 per cent. of the rates charged for lower berths.

Order accordingly.

Knapp, Ch., and Harlan, C., dissented on the ground that the proper test of the reasonableness of Pullman accommodations was not only the cost of service to the carrier but the relative value of service to the passenger determined by a comparison of the relative advantages of Pullman and ordinary cars; that although a less charge should be made for upper berths than for lower ones, the difference prescribed was too great.

1200.—Racine-Sattley Co. v. Chicago, M. & St. P. Ry. Co. et al.
18 I. C. C. Rep. 142. (April 4, 1910).

Complaint of unreasonable charge on axles and vehicle wheels from Racine, Wis., to Prescott, Ariz., and demand for reparation.

Defendants' tariffs contained a provision to the effect that freight not marked in a certain way should be subject to rating one class higher than otherwise. At the time of the shipment in question, this provision did not permit securely fastened durable tags in marking less-than-carload shipments. Subsequently the tariff was altered accordingly.

Held, (Lane, C.), that the rule in force at the time of the shipment was unreasonable and reparation should be awarded accordingly.

1201.—Milburn Wagon Co. v. Lake Shore & M. S. Ry. Co. et al.
18 I. C. C. Rep. 144. (April 5, 1910).

Complaint of unreasonable rates on wagons from Toledo, O., to Watertown and Cedarburg, Wis., Tonopah, Nev., and Savannah, Ga., and demand for reparation.

In the case of the shipments to Watertown and Cedarburg, the through rate exceeded the combination locals and no justification was offered by defendant. In the case of the shipment to Tonopah a portion of the combination rate in question was considerably higher than rates from other points under substantially similar circumstances. In case of the shipment to Savannah, the rate was a through rate, which it was alleged exceeded the combination of the rail rate from Toledo to Baltimore with a water rate from Baltimore to Sa-

vannah. The latter rate was not filed with the Commission and the only evidence of it was a letter from defendant to complainant.

Held, (Clark, C.), (a) that as to the first three shipments, the rates were unreasonable and reparation should be awarded accordingly;

(b) that as to the last shipment, the water rate, not being filed with the Commission, was not a lawful factor to be considered in the determination of the reasonableness of the joint rate, and reparation on this shipment should, therefore, be denied.

Order accordingly.

1202.—Stevens Grocer Co. v. Grand Rapids & Indiana Ry. Co. et al. 18 I. C. C. Rep. 147. (April 5, 1910).

Complaint of unreasonable rate on dried beans L. C. L. from Grand Rapids, Mich., to Newport, Ark., and demand for reparation.

The rate charged was a through rate of 82c. per 100 lbs. At the same time there was in effect a combination rate on Cairo of 68c. None of the defendants appeared at the hearing.

Held, (Clark, C.), that reparation should be awarded on the basis of the 68c. rate.

Order accordingly.

1203.—Jones v. Southern Ry. Co. 18 I. C. C. Rep. 150. (April 5, 1910).

Complaint of unreasonable rate on a smokestack from Chattanooga, Tenn., to Huntsville, Ala., and demand for reparation.

The stack in question was 25 feet long and the weight of the shipment 1016 lbs. Charges were collected at a 44c. rate, 4,000 lbs. minimum, in accordance with the published tariff of the Southern Classification, which provided that where articles were too long to be loaded in box cars they should be charged at a minimum of 4,000 lbs. first class. In January, 1910, the rule was changed so as to specify that articles too long to be loaded in a 36-ft. car through the side door should be subject to a 4,000 lb. minimum first class. The shipment in question was loaded on a flat car which was hauled 95 miles for the sole purpose of transporting the shipment. The opinion sets out the provisions of the several classifications with regard to articles too long or bulky to be loaded through side doors.

Held, (Clark, C.), (a) that the rule in force when the shipment was made, as well as the present rule was unreasonable, and the latter should be altered so as to provide that when articles were transported in an open car on account of being too long to be loaded through the side door of a box car not less than 40 ft. 6 inches in length, they should be subject to the 4,000 lb. minimum first class;

(b) that in the present case, since the shipment was made on an open car because too long to be loaded in a box car, the charge assessed was reasonable.

Reparation denied.

1204.—Copper Queen Consolidated Mining Co. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 154. (April 5, 1910).

Complaint of unreasonable rate on coke from West Virginia-Pennsylvania fields to El Paso, Tex., and Globe, Ark., destined to Arkansas and Arizona points, and demand for reparation.

The rate in question was a through rate via Chicago, of which the carriers as far as Chicago received \$2.65 per ton. The basis of the complaint was that at the time of the shipments in question the same carriers accepted \$2.35 per ton on coal to blast furnaces at South Chicago. The shipments in question did not, however, move under the local rate to the Chicago ovens. The complainant did not attack the reasonableness of the joint through rates.

Held, (Cockrell, C.), (a) that the division of the through rate was not a proper test of the reasonableness of the total rate;

(b) that under the facts complainants had suffered no injury or damage.

Complaint dismissed.

1205.—Stone-Ordean-Wells Co. v. Philadelphia, B. & W. R. Co. et al. 18 I. C. C. Rep. 160. (March 14, 1910).

Demand for reparation on account of unreasonable charge on canned tomatoes from Ridley, Md., to Duluth, Minn.

The Baltimore & Ohio, in connection with the Mutual Transit Company, had published a 28c. rate between the points in question, naming the Baltimore & Eastern Shore Transportation Company, a water line, as a connecting carrier. The latter company had formerly operated a boat line to a wharf four miles from Ridgely, also known as Ridgely, but prior to the shipment in question the wharf had ceased to exist and the Baltimore & Eastern Shore Transportation Company had gone out of business. The parties from whom complainant purchased the tomatoes informed him of this fact, but in spite thereof he ordered the freight via the Baltimore & Ohio, resulting in a movement by a route as to which the tariff combination rate was 35c. Complainant here endeavored to collect the difference between this and the 28c. rate.

Held, (Prouty, C.), (a) that under the facts, the complainant was charged with a knowledge of the actual situation and had no right to attempt to avail itself of a tariff which could not by any possibility apply;

(b) that this case was distinguishable from one in which a carrier published a rate from one of its regular stations to a point not on its line or on the line of one of its connections.

Complaint dismissed.

1206.—Windsor Turned Goods Co. v. Chesapeake & O. Ry. Co. et al. 18 I. C. C. Rep. 162. (April 5, 1910).

Complaint of unreasonable rate on hard-wood lumber from West Virginia and Kentucky points to Windsor, Ont.

The shipment moved under joint rates. There were also in effect joint rates to Detroit with an arbitrary of 2c. per 100 lbs. added to Windsor. The joint through rates to Windsor in some instances exceeded the Detroit rate plus the arbitrary or the Detroit rate plus the regular local of $2\frac{1}{2}$ c. from Detroit to Windsor.

Held, (Clark, C.), that "except in special and unusual circumstances, and respecting fully the limitations placed in tariffs upon the use of basing, proportional or arbitrary rates, the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lower combination that would lawfully apply if the joint through rate were cancelled."

Reparation awarded accordingly.

1207.—Brunswick-Balke-Collender Co. v. Chicago, M. & St. P. Ry. Co. et al. 18 I. C. C. Rep. 165. (April 5, 1910).

Complaint of unreasonable charge on partitions, refrigerator, glass and marble slabs from Chicago, Ill., to Chisholm, Minn., and Marquette, Mich., and demand for reparation.

The shipments in question were of such size that they could not be loaded into a 36-ft. box car but were loaded into a 41-ft. car. They were subjected in the first case to a 5,000 lb. minimum, and in the second to a 4,000 lb. minimum under the Western and Official Classifications respectively, which provided that where articles could not be loaded through the side door of a 36-ft. car they should be charged at 5,000 and 4,000 lbs. minimum.

Held, (Cockrell, C.), that the minima applicable were under the circumstances unreasonable and complainant was entitled to reparation on the basis of the charge which should have been exacted on the actual weight.

Order accordingly.

1208.—Utica Traffic Bureau v. New York, O. & W. Ry. Co. 18 I. C. C. Rep. 168. (April 5, 1910).

Complaint of unreasonable switching charge on coal at Utica, N. Y., and demand for reparation.

The New York, Ontario & Western exacted a switching charge of 30c. per gross ton for the service in question, which covered a distance of about a mile and a half under rather difficult conditions and at comparatively large expense. Of this charge the Lehigh Valley, by tariff provision, absorbed \$5 per car which, on the shipments in question, made a net charge of \$2.95 per car. The complainants contended that a reasonable switching charge would have been \$3.50 per car. It also appeared that \$1 of the charge was absorbed by the consignees of the coal.

Held, (Knapp, Ch.), (a) that without taking into consideration the \$1 absorbed by the consignees, the transportation and switching charge should be regarded as a total aggregate rate so that the net

switching charge which complainant was required to pay was but \$2.95;

(b) that under the circumstances, this charge was not unreasonable.

Complaint dismissed.

1209.—*Roach & Seeber Co. v. Chicago, M. & St. P. Ry. Co. et al.*
18 I. C. C. Rep. 172. (April 4, 1910).

Complaint of unreasonable rate on butter boxes from Milwaukee to Waterloo, Wis., as applied to interstate shipments, and demand for reparation.

The rate complained of was 15c. per 100 lbs. The boxes in question originated at Manchester, N. Y., but the portion of the rate up to Milwaukee was not complained of. Complainants contended that a rate of 6c. applicable to wooden pails, etc., should be applied to butter boxes, but it appeared that the articles in question were either much heavier or could be nested.

Held, (Knapp, Ch.), that a reasonable rate from Milwaukee to Waterloo on the shipments in question would be 9c. per 100 lbs. and reparation should be awarded accordingly.

1210.—*Wells-Higman Co. v. St. Louis, I. M. & S. Ry. Co. et al.*
18 I. C. C. Rep. 175. (April 4, 1910).

Complaint of unreasonable rate on bushel baskets from Traverse City, Mich., to Horatio, Ark., and demand for reparation.

The articles in question were billed by defendant locally to its agent in Memphis, then billed again locally to its agent at Wynne, Ark., and again billed locally from Wynne to Horatio. The rate from Traverse City to Memphis was not attacked. There was in effect a combination rate from Memphis to Horatio of 75c. based on Texarkana. The billing in question was evidently adopted in order to secure the advantage of the local rate of 20c. to Wynne and of 53c. from Wynne to Horatio, the latter being the intrastate rate prescribed by the Arkansas Commission. Certain of the shipments, however, were forwarded from Wynne on the interstate rate passing through a portion of Texas, and on these an 83c. rate at a minimum of 81,560 lbs. was assessed. It appeared, however, that this rate did not properly become effective until some days after the shipment, the tariff interstate rate at the time being 94c. at a minimum of 61,880 lbs., resulting in an overcharge of \$78.68.

Held, (Knapp, Ch.), (a) that the overcharge above noted should be refunded;

(b) that as there was no specific complaint made of the rate from Memphis to Wynne or of the interstate rate from Wynne to Horatio and that as the charge complained of resulted solely from the deliberate action of the complainant in making reshipments he was entitled to no relief except as to the overcharge.

Order accordingly.

1211.—Friend Paper Co. v. Cleveland, C., C. & St. L. Ry. Co. 18 I. C. C. Rep. 178. (April 4, 1910).

Complaint of unreasonable demurrage charge at West Carrollton, Ohio, and demand for reparation.

Prior to May, 1908, the carriers serving the State of Ohio had adopted a code of demurrage rules providing for an average agreement. Defendant had intended to publish the same rules, but by mistake had omitted to do so, the mistake resulting in a charge to complainant of \$193 demurrage which would not have been exacted had defendant had in effect an average agreement. Complainant alleged that he was unduly discriminated against in favor of his competitors on the other lines.

Held, (Knapp, Ch.), that a carrier could not be charged with giving a preference or advantage to points which it did not serve.

Complaint dismissed.

1212.—Southern Cotton Oil Co. v. Louisville & N. R. Co. et al. 18 I. C. C. Rep. 180. (April 4, 1910).

Complaint of unreasonable charge on cotton linters from Montgomery, Ala., to Minneapolis, Minn., and demand for reparation.

Defendants' tariffs provided for a rate via Jacksonville of 78c. per 100 lbs., or of 74c. when released to a valuation of 2c. per pound. Complainant had made inquiry as to the rate on cotton linters and been informed that the rate was 74c. When the shipment was forwarded, the bill of lading tendered complainant did not contain a release clause which the shipper might sign. The rate exacted was a combination rate of 81c. on Evansville.

Held, (Harlan, C.), (a) that defendants were responsible for misrouting the freight via Evansville instead of via Jeffersonville;

(b) that although the carrier was not bound by the rate quoted by its agent, in the present case as the defendants had reasonable notice of the shipper's desire to have the benefit of the low rate it was its duty to secure the shipper's signature to the release valuation clause.

Reparation awarded on the basis of the 74c. rate.

1213.—Lorleburg Co. v. New York, C. & St. L. R. Co. et al. 18 I. C. C. Rep. 183. (April 5, 1910).

Complaint of unreasonable rate on gasoline stoves, radiators and hot-water heaters and parts from Lorain, Ohio, and Detroit, Mich., to Oconomowoc, Wis., and demand for reparation.

The rates in question exceeded the combination local rates on Duplainville. No explanation was offered by the defendants.

Held, (Lane, C.), that reparation should be awarded on the basis of the combination rates.

1214.—Knox v. Wabash R. Co. 18 I. C. C. Rep. 185. (April 5, 1910).

Complaint of unreasonable charge on a crated sign-board from Chicago, Ill., to Wabash, Ind., and demand for reparation.

The sign-board in question was too large to go in through the side door of a 36-ft. car and a 40-ft. box car was therefore used. The rate was assessed on a 4,000 lb. minimum in accordance with the Official Classification rule providing for a 4,000 lb. minimum on articles too long to be loaded in a 36-ft. box car through the side door. Subsequently the rule was amended so as to provide the 4,000 lb. minimum only when articles were actually loaded on a flat or gondola car by reason of being too long to be loaded through the side door of a box car.

Held, (Lane, C.), that the rule in effect at the time of the shipment was unreasonable and reparation should be awarded on the basis of the rate which would have been charged under the present rule.

Order accordingly.

1215.—*Littell v. St. Louis S. W. Ry. Co. et al* 18 I. C. C. Rep. 187. (April 4, 1910).

Complaint of unreasonable south-bound passenger rate from Cairo, Ill., to Waco, Tex.

During 1909, after the decision by the court holding the 2c. fare bills of Arkansas and Missouri illegal, defendants made an extensive revision of their passenger rates. The south-bound rates were contained in an elaborate schedule, which could not be revised before August, 1909. The north-bound rates, however, were in a simple schedule which could be changed immediately. During the spring of 1909, therefore, the north-bound rate in the tariff was \$15.95 while the south bound rate was \$19.85. The sole fact relied on by complainant was that the south-bound rate exceeded the north-bound rate.

Held, (Harlan, C.), (a) that passenger fares need not be the same in one direction as in another;

(b) that under the conditions disclosed by the testimony, the rate exacted was not unreasonable.

Complaint dismissed.

1216.—*Spreckles Bros. Commercial Co. v. Monongahela R. Co. et al.* 18 I. C. C. Rep. 190. (April 4, 1910).

Complaint of unreasonable charge on coke from Leekrone and West Brownsville, Pa., to Los Angeles, Cal., and demand for reparation.

In case of the first shipment, it appeared that the complainants had ordered the traffic routed via New Orleans on being told by defendants that the rate was the same via New Orleans as via Chicago. This statement, however, was not true and a higher charge resulted. The second case presented a clear misrouting by defendants' agent.

Held, (Knapp, Ch.), (a) that in the first instance, since the rout-

ing had been directed by complainant, he was entitled to no reparation even though such routing had been based on a misstatement by the carrier's agent;

(b) that in the second case, reparation should be awarded on the basis of the charge by the cheapest route.

Order accordingly.

1217.—**Hollingshead & Blei Co. v. Pittsburgh & L. E. R. Co. et al.**
18 I. C. C. Rep. 193. (April 4, 1910).

Complaint of unreasonable charge on hoop steel from West Pittsburgh, Pa., to Cleveland, O.

Complainant had directed the shipment to be forwarded "all-rail" and this was done at the published rate of 33½c. There was in effect at the same time a rate of 22c. on a cross-lake route.

Held, (Knapp, Ch.), (a) that the direction to route "all rail" did not reasonably cover a route across lake;

(b) that the higher charge resulted from complainant's routing directions.

Complaint dismissed.

1218.—**Sage & Co. v. Illinois Central R. Co.** 18 I. C. C. Rep. 195.
(April 4, 1910).

Complaint of unreasonable demurrage charge on soft coal at Burlington, Ill.

Complainants had consigned a shipment to a fictitious person at Burlington and written to the Illinois Central agent at Chicago to change the billing to another party at Charles City, Ia. The reason for this procedure appeared to be that there was a sort of an embargo against the real consignees. With the letter in question, the complainants did not enclose the tariff reconsignment rate of \$2 and defendant denied ever having received the letter. Demurrage charges accrued while the car was standing at Burlington.

Held, (Knapp, Ch.), that under all the circumstances, the defendant had used due diligence with respect to the shipment and the demurrage charges were rightfully collected.

Complaint dismissed.

1219.—**Penn Tobacco Co. v. Old Dominion Steamship Co. et al.**
18 I. C. C. Rep. 197. (April 4, 1910).

Complaint of unreasonable rate on raw sugar from New York City to Reidsville, N. C., via water and rail.

The charge exacted was the regular fourth class rate of 40c. Subsequently there was established a through commodity rate of 26½c. and it was on this fact that the complaint was based. It appeared that the rate to Martinsville and Winston-Salem, points in the same general vicinity, had been 29½c. and defendants had reduced the rate to Reidsville when this fact was called to their attention, practically admitting that the Reidsville road was out of line.

Held, (Harlan, C.), that although a reduction in a rate standing by itself and unaccompanied by other facts of a convincing character ought not to be accepted either as proving or necessarily tending to prove that the previous higher rate was an unreasonable and excessive one, yet under admissions of the defendants' agents in the present case, it was apparent that the rate charged had been unreasonable and reparation should be awarded on the basis of the 29½c. rate in effect to Winston-Salem and Martinsville at the time of this shipment.

Order accordingly.

1220.—Fuller & Co. v. Southern Pacific Co. et al.. 18 I. C. C. Rep. 202. (April 4, 1910).

Complaint of illegal charge on rough rolled, ribbed, and wired skylight glass from Dunbar, Wash., and Allegheny, Pa., to San Francisco, Cal., and demand for reparation.

At the time of the shipments, the defendants' tariffs provided a rate of \$1.10 on skylight glass n. o. s., and also a rate of \$1.25 on wired or ribbed glass. Plaintiff shipped rough rolled ribbed and wired skylight glass and was charged at the \$1.25 rate.

Held, (Clements, C.), that the \$1.25 rate was properly applicable to the shipments in question.

Complaint dismissed.

1221.—Mutual Transit Co. v. United States. 178 Fed. 664. C. C. A. 2d Cir. (April 4, 1910).

In error to D. C. W. D. N. Y. on judgment for plaintiff in action for giving rebates.

The defendant was a New York corporation operating a line of steamers from Buffalo, N. Y., to West Superior, Wis. The Camden Iron Works had made a contract to sell iron pipe at Winnipeg and desired to ship it from Emaus, Pa. to Winnipeg. Defendant agreed to protect a 45c. rate between the points in question. Shipment was made by the Philadelphia & Reading and Lehigh Valley to Buffalo, by defendant's steamships to West Superior, and thence by the Great Northern and Canadian Northern to Winnipeg. There was, at the time, on file a rate from Emaus to West Superior of 24½c., filed by the Philadelphia & Reading line. Defendant had concurred in this rate when it was filed in 1903, but it was later cancelled and when refiled, defendant had not concurred. There was also filed a rate from West Superior to Winnipeg of 25c. in which defendant had never concurred. The shipment went through on through bills of lading. The shipper was charged the tariff rate of 49½c. and subsequently defendant refunded 4½c. to Camden Iron Works in pursuance of its agreement, the other carriers receiving the divisions stated in the tariff.

Held, (Noyes, C. J.), (a) that broadly speaking, the Act applies to

railroads and not to water carriers, and as a general rule, such carriers are not subject to it;

(b) that water carriers become subject to the Act only as to freight carried under a common control, management or arrangement;

(c) that although a mere agreement by a water line with a shipper to accept freight from a connecting line without transshipment and on a through bill of lading was an "arrangement for continuous carriage," it was not a "common arrangement" with the rail line;

(d) that in the present case the sole agreement being between the water line and the shipper, and there being no mutual arrangement of any kind between the water line and the railroads, and defendant never having concurred in the rates filed by the railroads, defendant was not subject to the Act;

(e) (semble) that even were defendant subject to the Act, mere participation in the 49½c. rate for the time being, when defendant was under contract to restore part thereof to the shipper, was not such participation as would amount to a concurrence in the tariffs.

Judgment reversed.

1222.—Forest City Freight Bureau v. Ann Arbor R. Co. et al.
18 I. C. C. Rep. 205. (April 12, 1910).

Complaint of unreasonable rate and classification on horse blankets in Official Classification Territory.

Horse blankets were rated first class with bed blankets. The complainants contended that horse blankets should be fifth class in carloads, and third class in less than carloads by reason of their less value.

Held, (Clark, C.), (a) that "classification is not an exact science; nor may the rating accorded a particular article be determined alone by the yard-stick, the scales, and the dollar;"

(b) that the distinction of horse blankets from the general class of blankets was not warranted.

Complaint dismissed.

1223.—Houston Structural Steel Co. v. Wabash R. Co. et al. 18
I. C. C. Rep. 208. (April 5, 1910).

Complaint of unreasonable charge on structural steel from Chicago, Ill., to Houston, Tex., and demand for reparation.

The steel in question was too long to load in a 36-ft. car but was loaded in a 45-ft. furniture car. Defendants' rule applied a minimum of 5,000 lbs. to articles too long to be loaded through the side door or end window of a 36-ft. car.

Held, (Prouty, C.), that the rule in question was unreasonable and should be altered by correspondent with the rule prescribed in Jones v. Southern Ry. Co. (1203).

Order accordingly.

1224.—**Dobbs v. Louisville & Nashville R. Co.** 18 I. C. C. Rep. 210. (April 11, 1910).

Complaint of unreasonable charge on canned peaches from Oakhurst, Ga., to Marietta, Ga., and demand for reparation.

While the application by complainant to defendant was pending for a low through rate from Oakhurst to Lexington, Ky., and Cincinnati, O., he shipped the cars in question to himself at Marietta, and then reshipped from Marietta to Lexington and Cincinnati. The rate for the latter part of the journey was not complained of, but complaint was made of the 6c. charge from Oakhurst to Marietta, a distance of 4 miles.

Held, (Cockrell, C.), that the transportation from Oakhurst to Marietta was intrastate and not within the jurisdiction of the Commission.

Complaint dismissed.

1225.—**American Creosote Works, Ltd. v. Illinois Central R. Co. et al.** 18 I. C. C. Rep. 212. (April 4, 1910).

Demand for reparation on account of unreasonable charge and of discrimination on shipments of ties to and from Southport, La., and preference of the Ayer & Lord Tie Company at Carbondale, Ill.

The discriminations complained of were: 1st, the charge to complainant based on the actual weight of the ties, and a much lower average per tie rate accorded the Ayer & Lord Company; 2d, in allowing the latter company the privilege of treating ties in transit at Carbondale and Granada and refusing like privilege to complainant; 3d, in a lower switching charge at Carbondale than at Southport; 4th, in cancelling rates in force on defendants' being informed that complainant had made contracts based thereon for delivery of ties. The complainant claimed \$581,346.51, \$500,000 being in the nature of general damages for discrimination. It appeared that the complainant had entered into a contract for the sale of 500,000 ties and that as soon as defendants were informed of this, the existing rate of 11c. per tie had been raised, resulting in a loss and damages to the complainant to the amount of \$56,000. It appeared that charges paid by complainant were based on a rate of 20c. per 100 lbs., the ties averaging 180 lbs., while the Ayer & Lord Company was given a rate of 14c. per tie. The ties of the latter company were approximately thirty lbs. heavier than complainant's ties. The complainant was charged \$6 per car at Southport for switching, while at Carbondale the charge was but \$1.50 per car. The circumstances and conditions at the two points, however, were very dissimilar. The rate per ton per mile allowed the Ayer & Lloyd Co. was considerably lower than that given to complainant.

Held, (Cockrell, C.), (a) that the circumstances and conditions at Carbondale and at Southport were not so similar as to require the

same switching charge at each point or to render it illegal to allow treatment in transit at Carbondale and its refusal at Southport;

(b) that although the Commission found as a fact that the complainant had been subjected to unjust discrimination by reason of the cancellation of the tie rate as above and by reason of loss of profits on contracts because of defendants' illegal acts, the Commission had no jurisdiction to award damages suffered thereby except rate damages and as to other damages complainant was left to pursue its remedy, if any, in the courts;

(c) that the charge to complainant per 100 lbs. and to the Ayer & Lord Co. per tie resulted in an unjust discrimination in favor of the latter and damages would be awarded on the basis of the difference between the rate paid, 36c., and what should have been charged 16.8c. per tie;

(d) that complainant was not entitled to a rate per ton mile for its shorter haul based on the per ton mile rate allowed the Ayer & Lord Co.

Order accordingly for reparation in the approved items.

Petition for re-hearing denied, 19 I. C. C. Rep. 314, June 11, 1910.

1226.—**Wilson Saddlery Co. v. Colorado & Southern Ry. Co. et al.**
18 I. C. C. Rep. 220. (April 11, 1910).

Demand for reparation on shipments of harness leather from San Francisco, Cal., to Denver, Col.

The rate charged was \$1.25 and the claim was based on the fact that it was subsequently reduced to \$1.15 and that it had previously for some time been but \$1.05. Defendants showed, however, that the \$1.15 rate was very low and would have been increased except for representations by shippers that they could not compete on a higher rate.

Held, (Lane, C.), that the facts showed no basis for reparation.

Complaint dismissed.

1227.—**International Harvester Co. of America v. Chicago, M. & St. P. Ry. Co.** 18 I. C. C. Rep. 222. (April 11, 1910).

Complaint of unreasonable rate on agricultural implements from Chicago, Ill., to Black Earth and Mauston, Wis., and demand for reparation.

The complaint was based on the previous and subsequent existence of a lower rate. Defendant admitted the justice of the complaint but the latter was not supported by expense bills and other evidence that the shipments actually moved and that the charges had actually been collected.

Held, (Lane, C.), that the Commission was not justified in awarding reparation merely on the allegations of the complaint even though supplemented by defendant's admissions.

Complaint dismissed.

1228.—**Noble v. Vicksburg, Shreveport & Pacific Ry. Co. et al.** 18 I. C. C. Rep. 224. (April 11, 1910).

Complaint of unreasonable rate on coiled elm hoops from Tallulah, La., to Lime City, Tex., and demand for reparation.

The rate charged was 30c. per 100 lbs. At the time of the shipment there was in effect a combination rate of 26¾c. on Shreveport and no justification appeared for the higher through rate.

Held, (Clark, C.), that reparation would be awarded on the basis of the 26¾c. rate.

Order accordingly.

1229.—**Ryan v. Great Northern Ry. Co. et al.** 18 I. C. C. Rep. 226. (April 11, 1910).

Complaint of unreasonable rate on dried fruit from San Francisco, Cal., to Chinook, Mont., and demand for reparation.

The rate charged was a through class rate of \$1.59 per 100 lbs. There was in effect at the same time a combination rate of \$1.15 on Havre, Mont. The Great Northern admitted the allegation of the petition and submitted the order to the Commission. The Pacific Coast Steamship Company stated in its answer that it received the same division on the through rate as on the combined locals. It appeared that a rate of \$1.10 was published to a more distant point on the same line.

Held, (Cockrell, C.), (a) that reparation should be awarded on the basis of the \$1.15 rate;

(b) that the rate of \$1.10 should be maintained to Chinook for the future.

Order accordingly.

1230.—**Southern Timber & Land Co. v. Southern Pacific Co. et al.** 18 I. C. C. Rep. 232. (April 11, 1910).

Complaint of unreasonable rate on hub blocks in the rough from Will's Point, Tex., to Stockton, Cal., and demand for reparation.

The rate charged was \$1.25. It was subsequently reduced to 85c., the latter rate having been in effect from Texarkana, a more distant point, at the time of the shipment. In support of the rate relation defendants alleged water competition.

Held, (Prouty, C.), that the rate charged was unreasonable *per se* in so far as it exceeded 85c., which rate should be maintained for the future, and reparation ordered accordingly.

1231.—**Schultz-Hansen Co. v. Southern Pacific Co. et al.** 18 I. C. C. Rep. 234. (May 2, 1910).

Complaint of unreasonable charge for loading and unloading carload freight at San Francisco, Cal.

The rules of the defendants provided that carload freight might be unloaded at San Francisco at the option or will of the carrier, and when such unloading was done by the carrier, a charge of 20c. per

ton of 2,000 pounds would be exacted. The unloading assistance rendered under this tariff appeared to be merely the delivery of packages to and taking them from the car doors. It appeared that the carriers preferred the shippers to load and unload freight and that in practice the assistance was rendered only on the request of the shipper, but it also appeared that more than 75 per cent. of the car-load freight at San Francisco was loaded or unloaded in part by the carriers.

Held, (Clark, C.), (a) that the tariff in question was illegal and discriminatory in that it did not provide for a precise and absolute service, but for one rendered at the option of a carrier;

(b) that the Commission did not decide as to the reasonableness of the charge for loading or unloading;

(c) that a tariff providing for loading or unloading was not complied with by delivery at the car door;

(d) (semble) that if 20c. per ton was reasonable for loading and unloading proper, a less charge should be made for delivery at the car door.

Order requiring defendants to cease from maintaining tariffs containing the above discriminatory provisions.

1232.—Glavin Grain Co. v. Chicago & N. W. Ry. Co. et al. 18
I. C. C. Rep. 241. (April 4, 1910).

Complaint of unreasonable rate on corn from Glidden, Ia., to Chetek, Wis., and demand for reparation.

The rate charged was 25c., which was high in comparison with rates to surrounding points. Later a rate of 19¼c. was put in effect.

Held, (Knapp, Ch.), that reparation should be awarded on the basis of the latter rate.

1233.—Kiel Woodenware Co. v. Chicago, M. & St. P. Ry. Co. 18
I. C. C. Rep. 242. (April 4, 1910).

Complaint of unreasonable rate on logs from Michigan points to Kiel, Wis., and demand for reparation.

Prior to August 20th, 1907, defendant had in effect a rate of \$2.50 per 1000 feet on logs, without limitation as to size. On August 20th, by a supplement, this rate was limited to logs sawed 10 ft. or more in length. The supplement was filed with the Commission and distributed with defendant's agents, but no copy reached the agent at Kiel and no copy was posted there. If complainants had known of the supplement they would have sawed their logs into the length to which the rate applied and they sought reparation for failure to post the tariff as required by law.

Held, (Knapp, Ch.), (distinguishing the case of *Texas & Pacific Ry. Co. v. Cisco Oil Mill*,) (454*) (a) that the damages, having been suffered by reason of defendant's failure to post the tariff, could be recovered;

(b) that the damages sought were rate damages over which the Commission had jurisdiction.

Order for reparation accordingly.

1234.—Delray Salt Co. v. Detroit, T. & I. Ry. Co. et al. 18 I. C. C. Rep. 245. (April 11, 1910).

Complaint of unreasonable rate on salt from Detroit, Mich., to Memphis, Tenn., and demand for reparation.

The rate exacted was the joint rate of 16c. per 100 lbs, from Detroit to Memphis. There was in effect at the same time a rate of 5 2-3c. from Detroit to St. Louis "for shipment beyond," which might be combined with the 8c. local rate of the Illinois Central from St. Louis to Memphis.

Held, (Prouty, C.), (a) that as the joint rate of 15c. mentioned Memphis specifically, this was the legal rate and not the combination of the proportional rate, since the latter did not specify particular points;

(b) that the 16c. rate did not appear to be unreasonable *per se* as it yielded but four mills per ton mile.

Complaint dismissed.

1235.—Delray Salt Co. v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 247. (April 11, 1910).

Complaint of unreasonable rate on salt from Detroit, Mich., to Patricksburg, Ind., and demand for reparation.

The rate charged was 12 1-3c. Defendants admitted that the present rate of 10½c. was reasonable. Complainants asked reparation on the basis of the 8 1-3c. rate in force over a competing road.

Held, (Prouty, C.), that reparation should be awarded on the basis of the 10½c. rate.

1236.—Delray Salt Co. v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 248. (April 11, 1910).

Demand for reparation by reason of misrouting salt from Detroit, Mich., to Houston, Miss.

Defendants admitted the misrouting and an order for reparation was made accordingly.

1237.—Platten Produce Co. v. Kalamazoo, L. S. & C. Ry. Co. et al. 18 I. C. C. Rep. 249. (April 11, 1910).

Demand for reparation for misrouting grapes from Paw Paw, Mich., to Green Bay, Wis.

Under the routing given by the shipper, the natural route was by car ferry across Lake Michigan at a rate of 33½c., but through an error by the agent of the Pere Marquette, the freight was diverted from this route and forwarded by a route with a 65c. rate, resulting in the excess charge complained of.

Held, (Prouty, C.), that reparation should be awarded on the basis of the lower rate.

1238.—Sprunt & Son v. Seaboard Air Line Ry. 18 I. C. C. Rep. 251. (April 4, 1910).

Complaint of unreasonable charge on cotton from North and Olar, S. C., to Wilmington, N. C., and demand for reparation.

The rate charged from North was 45c. and from Olar 51c., these rates having been advanced in October, 1908, from 36c. and 32c. respectively. The reason for the advance was that defendant found that its through rates in this vicinity exceeded the sum of the locals and increased the local rates accordingly, including the two in question. Within six weeks, the former rates were restored. The shipments in question were made during the interval. Defendant did not object to reparation on the basis of the 36c. rate from North but contended that Olar was not entitled to a lower rate, Olar being more distant.

Held, (Harlan, C.), that although perhaps Olar was not theoretically entitled to a lower rate, yet in view of the long prior maintenance of such rate and of its reduction subsequently, justice required reparation on the basis of the rates previously maintained, but no order would be made governing the rates for the future.

1239.—Royal Metal Mfg. Co. v. Chicago G. W. R. Co. 18 I. C. C. Rep. 255. (April 11, 1910).

Demand for reparation on shipment of folding chairs from Chicago, Ill., to St. Joseph, Mo.

From the record it appeared that the charge made was in excess of the proper tariff rate.

Held, (Knapp, Ch.), that reparation should be made without an order from the Commission.

1240.—Rotsted Co. v. Chicago & N. W. Ry. Co. 18 I. C. C. Rep. 257. (April 11, 1910).

Demand for reparation by reason of unreasonable charge on a mixed shipment of oats and flaxseed screenings in bulk from Chicago, Ill., to Milwaukee, Wis.

Defendant admitted that the charge was unreasonable and was willing to make reparation.

Held, (Knapp, Ch.), that reparation should be awarded accordingly, and defendant be required to maintain as low a rate on mixed oats and flaxseed screenings as on straight oats shipments.

1241.—Delray Salt Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 259. (March 14, 1910).

Complaint of unreasonable rate on rock salt from Cuylerville, N. Y., to Detroit, Mich., of discrimination in favor of shippers from the same point to Chicago and Hegewisch, Ill., and demand for reparation.

The rate in question was 11c. while the rates to Chicago, Hegewisch and Hammond, Ind., were 10c. Under the general rate adjustment

in the region, Detroit was a 78 per cent. point and Detroit took a 7.8c. rate on evaporated salt.

Held, (Clements, C.), that there was no justification for a higher rate on rock salt than on evaporated salt and reparation should be awarded on the basis of the 7.8c. rate.

1242.—*Rosenblatt & Sons v. Chicago & N. W. Ry. Co. et al.* 18 I. C. C. Rep. 261. (April 4, 1910).

Complaint of unreasonable rate on pants, shirts, overalls and duck clothing from various points to Beloit, Wis., of unreasonable rate and classification of "triplex cloth" from Ft. Wayne to Beloit, and demand for reparation.

With reference to the first class of shipments, the through rates exceeded the combinations on Chicago. The "triplex" cloth in question was classed as "cotton piece goods," but in weight, texture and the use to which it was put it differed from such goods.

Held, (Harlan, C.), (a) that on the first shipment reparation should be awarded on the basis of the lower combination;

(b) that as to the second shipment the goods should have been rated as "dry goods n. o. s.," and not as "cotton piece goods," and until the proper rate was paid by the shipper, no opinion would be expressed by the Commission with reference to it.

Order accordingly.

1243.—*Vulcan Steam Shovel Co. v. Missouri Pacific Ry. Co. et al.* 18 I. C. C. Rep. 265. (April 4, 1910).

Complaint of unreasonable rate on parts of a steam shovel from Coffeyville, Kan., to Toledo, O., and demand for reparation.

The steam shovel proper on its own trucks and wheels was rated at 33c. Other parts of it, however, were shipped in another car and were charged a 60c. rate. Two bills of lading were issued.

Held, (Clements, C.), that the initial carrier should establish for the transportation of the parts of a steam shovel, accompanying the shovel hauled on its own wheels, a rate no higher than a steam shovel rate proper, all to be billed on one bill of lading, and that reparation should be awarded accordingly.

1244.—*Delray Salt Co. v. Michigan Central R. Co. et al.* 18 I. C. C. Rep. 268. (April 11, 1910).

Complaint of unreasonable rate on salt from Detroit, Mich., to Buffalo and New York City.

The rates in question were 8c. to Buffalo and 17½c. to New York City. In view of the relatively lower rates to other points in the vicinity voluntarily established by defendant,

Held, (Knapp, Ch.), that the rate for the future to Buffalo should not exceed 6c. and that to New York 15c.

Order accordingly.

1249.—Utica Traffic Bureau v. New York Central & H. R. R. Co. et al. 18 I. C. C. Rep. 271. (May 2, 1910).

Complaint of discrimination against complainant by reason of withdrawal of assistance in unloading carload freight at Utica, N. Y.

Prior to January 1st, 1909, defendants' tariffs had required that owners load and unload carload freight, provided that carriers reserve the right to load and unload "at their convenience." After January, 1909, the proviso was struck out of the tariff at Utica, although retained at New York City and certain other New York points. The practice of furnishing tally men and assistants at Utica had not been uniform. It had been followed for the carrier's own convenience but greatly assisted the shipper in checking freight in connection with claims for damages. It had gradually been lessened after May, 1908, until absolutely discontinued January, 1909. At the points where it was furnished, the competition was greater.

Held, (Clark, C.), that no discrimination appeared by reason of the discontinuance of the practice in question.

Complaint dismissed.

1250.—Southern Cotton Oil Co. v. Atlantic Coast Line R. Co. et al. 18 I. C. C. Rep. 275. (May 2, 1910).

Complaint of unreasonable rate on cotton-seed hulls from Fayetteville, N. C., to Cartersville, Ga., and demand for reparation.

The rate charged was \$7.60 per ton, a through sixth class rate, and reparation was claimed on the basis of a \$2.50 rate. Defendants admitted that \$3.30 would have been reasonable. There was a \$2.50 rate in force via other lines, and a combination rate on Atlanta of \$3.30. The Atlanta rate was \$3.

Held, (Clark, C.), that the Cartersville rate should not exceed \$3.20, and reparation should be awarded on this basis.

Order accordingly.

1251.—Consumers' Ice Co. et al. v. Atchison, T. & S. F. Ry. Co. 18 I. C. C. Rep. 277. (May 2, 1910).

Complaint of unreasonable rate on slack coal from Gallup, N. Mex., to El Paso, Tex., and demand for reparation.

The rate in question was \$2.60 per ton. The claim was based: 1st, on a rate of \$2.15 per ton to Courchesne, Tex., a point 2½ miles from El Paso and intermediate to Gallup; and 2d, on the fact that since the shipments, defendant had put in effect a \$2 rate. It appeared that the \$2.15 rate to Courchesne had been the result of a mistake and it should have been \$2.60, and that the lower rate subsequently established was to induce traffic which would not otherwise have moved.

Held, (Clark, C.), that under the evidence it did not appear that the \$2.60 rate had been unreasonably exacted.

Complaint dismissed.

1252.—Lamb Co. v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 279. (May 2, 1910).

Demand for reparation on shipment of grapes from South Haven, Mich., to La Crosse, Wis.

The complainant relied solely on the subsequent voluntary reduction of the rate.

Held, (Clark, C.), that the rate charged did not appear to be unreasonable.

Complaint dismissed.

1253.—In re Substitution of Tonnage at Transit Points. 18 I. C. C. Rep. 280. (May 3, 1910).

Investigation by the Commission of its own motion, in response to informal complaints from shippers as to the propriety of Conference Ruling No. 76-A of June 29, 1909, dealing with the substitution of tonnage at transit points.

The ruling in question provided in effect that transit was not legal except for the identical commodity, or its exact equivalent or its product. Many shippers contended that this ruling was too strict and that it should be modified. It appeared that the transit privileges at various points in the country were subject to many abuses. Among the most common of these was the substitution of one commodity for another, or of different varieties of the same commodity for each other, such as red wheat for hard wheat, yellow corn for white corn, oak lumber for maple lumber, fine salt for rock salt, etc. The tariffs also provided for the reshipment of an identical amount of the product, whereas in every process of treatment there was more or less loss, resulting in transportation, at the balance of the through rate, of commodities originating at the transit point. It also appeared that by other subterfuges local supply was forwarded on transit rates. Another practice was to mix carloads and transport the mixed articles at the most favorable rate applicable to solid carloads. Non-transit commodities were also added at transit points. There appeared further to be considerable trading in expense bills, and also the use of surplus billing for the transportation of articles subsequently arriving at the transit point, in some cases shippers forwarding articles at transit rates before the inbound materials arrived, amounting to an overdraft on the transit account. In some instances, where the through rate via the transit point was less than the local rate to the transit point, the through rate was collected to the transit point on local shipments. It appeared that transit privileges were being constantly extended by carriers in order to secure shipments over their lines to points beyond.

Held, (Cockrell, C.), (a) that although in case of articles uniform in quality, mixed in a large mass, the exact identity of each carload need not be preserved in order to entitle it to a transit privilege, yet substitution of different commodities was entirely without sanction of law, since the transit could only cover the identical commodity or its product;

(b) that articles originating at the transit point could in no case be shipped on transit rates;

(c) that where there was no local supply at the transit point or where billing was cancelled for all tonnage disposed of locally, and the tonnage and billing were checked so as to avoid abuses, there was no objection to mixing carloads, but that without such precautions the mixing was illegal;

(d) that where an appreciable amount of a non-transit commodity was added at a transit point, such commodity should be rated at the local rate and was not entitled to transit rates;

(e) that trading in expense bills was improper and illegal;

(f) that all surplus billing of inbound shipments should be promptly cancelled;

(g) that overdrafts on transit accounts were illegal;

(h) that the collection of less-than-local rates to transit points for the transportation to such points was improper;

(i) that shippers might fairly be required to certify that shipments offered by them were entitled to go forward on the transit rates;

(j) that although the Commission could not condemn transit rates as a whole, yet the carriers should adopt a policy tending gradually to eliminate such rates by yielding somewhat in local rates to and from transit points, tending to the adoption of a flat rate system;

(k) that the Commission still adhered to Ruling No. 76-A, explained as above, and unless the carriers promptly adopted measures to comply with the law, criminal proceedings would be recommended.

1254.—Ohio Iron & Metal Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 299. (May 3, 1910).

Demand for reparation by reason of misstatement of rate by defendants' agent on scrap iron from St. Louis, Mo., to Canton, Ill.

Defendants' agent had solicited the shipment, stating that the rate over its line was the same as over competing lines. This was not true, however, and complainant was charged defendants' regular tariff rates.

Held, (Cockrell, C.), that the facts did not entitle complainant to reparation.

Complaint dismissed.

1255.—Maris v. Southern Pacific Co. et al. 18 I. C. C. Rep. 301. (May 2, 1910).

Complaint of unreasonable rate on hard-wood lumber from points east and west of the Mississippi River to San Francisco, Cal., and other Pacific Coast terminals, and demand for reparation.

The rate in question was 85c. per 100 lbs.

Held, (Clements, C.), (following *Kindelon v. Southern Pacific Co.* (1081)) (a) that as to shipments from points on and west of the Mississippi River, moving prior to the date of the filing of the com-

plaint in *Burgess v. Transeontinental Freight Bureau* (659), reparation should be awarded on the basis of the 75c. rate;

(b) that as to shipments from points east of the river, the evidence was not sufficient to justify a finding that the rate of 85c. was unreasonable.

Order accordingly.

1256.—White Bros. et al. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 308. (May 2, 1910).

Complaint of unreasonable rate on hard-wood lumber from points east of the Mississippi to San Francisco, Cal., and demand for reparation.

The complaint was based on the fact that there was a combination of local rates less than 85c. between the same points.

Held, (Clements, C.), (following *White Bros. et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*), (1091), that the evidence was not sufficient to warrant findings that the through rates charged were unreasonable.

Complaint dismissed.

1257.—Associated Jobbers of Los Angeles v. Atchison, T. & S. F. Ry. Co. et al. 18 I. C. C. Rep. 310, 333. (April 5, 1910, April 11, 1910).

Complaint of unreasonable charge for delivering and receiving interstate carload freight on industrial sidings within defendants' shipping limits at Los Angeles, Cal.

At Los Angeles defendants' shipping limits extended for six or seven miles. Carload freight was delivered at team tracks, at freight sheds, or at industrial spurs. At team tracks and freight sheds no terminal charge was exacted, while at industrial spurs a charge of \$2.50 per car was made on freight moving either in or out. The spurs were constructed by the Southern Pacific and by the Santa Fe under uniform contracts with shippers. The shipper contributed to the cost of construction, but the track became the exclusive property of the carrier, which it might use for other freight than that of the industry for which it was specially designed. The shippers did not furnish motive power. The theory of complainants' case was that the industrial spurs were really part of the receiving and delivering system of the carriers and that delivery on such spurs was necessarily included in the published freight rate. The defendants contended that the spurs were, however, merely plant facilities constructed for the shippers' convenience. The tracks were not strictly private and the carrier was entitled to use them for storing freight or as leads to the plants of other shippers. Both the carrier and the shipper, therefore, benefitted by their existence. In cases where the line haul was made by a carrier other than that controlling the industrial spur, the line haul carrier paid to the other \$7.50 per car and upwards, this payment being compensation

to the delivering carrier for losing the line haul which the shipper would otherwise have been compelled to give to it, and being in addition to the \$2.50 paid by the shipper. The \$2.50 charge was made at Los Angeles, San Francisco and San Diego, but at no other points in the United States. It was practically admitted that the \$2.50 charge was reasonable for the service covered by it if such service could properly be segregated from the transportation proper.

Held, (Lane, C.), (a) that as regards freight received or delivered by the same carrier which made the line haul, the industrial sidings in this case formed part of the terminal facilities of the carriers;

(b) that unlike the practice in England, under the American system of fixing rates, the delivery and receipt of freight at the carrier's ordinary terminals was included in the transportation rate and not properly the subject matter of a separate charge;

(c) that the terminal charge which Section 6 required to be stated separately was a charge for service in addition to the ordinary receipt or delivery of freight at the regular depots;

(d) that the service at the industrial sidings here in question was a delivery service and nothing more, and a mere substitute for the ordinary delivery at defendants' regular terminals, and should properly be covered by the transportation rate;

(e) that it was unreasonable to exact the \$2.50 at Los Angeles, San Francisco, and San Diego and not at other points similarly situated to which the same transportation rate applied;

(f) that the case of Union Stockyards (399) was distinguishable on the ground that the Union Stockyards Railroad was a separate and distinct entity which was entitled to an independent charge for its services;

(g) that where, however, the \$2.50 charge was imposed for delivery on industrial spurs when the line haul was made by a foreign carrier, such charge was proper, independent of any adjustment made by the various carriers among themselves.

Order condemning the \$2.50 charge as to freight moving incidentally to a system line haul.

Prouty, C., concurred on the ground that the defendants had by their conduct made the spur tracks part of their terminal facilities.

Harlan, C., concurred, principally, it would seem, on the ground that it was unreasonable to cast the burden of this charge on San Francisco, Los Angeles and San Diego alone, hinting also that defendants' public team tracks were not sufficient as terminal facilities.

Knapp, Ch., dissented on the ground that the \$2.50 charge was admittedly reasonable for the service rendered; that the total rates being highly competitive could not be said to be unreasonable; that the exaction of the charge could not properly be traced to any violation of the Act.

1258.—**Winona Carriage Co. v. Pennsylvania R. Co. et al.** 18 I. C. C. Rep. 334. (May 2, 1910).

Complaint of unreasonable rate on bar steel from Johnstown, Pa., to Winona, Minn., and demand for reparation.

The basis of the complaint was the fact that the through less-than-carload rate in question, 44c., exceeded a combination of a less-than-carload rate to Chicago plus a carload rate beyond, making an aggregate of 33c.

Held, (Lane, C.), that the existence of a combination like that shown did not render the through rate presumptively unreasonable.

Complaint dismissed.

1259.—**Zang Brewing Co. v. Chicago, B. & Q. R. Co. et al.** 18 I. C. C. Rep. 337. (May 3, 1910).

Complaint of unreasonable rate on wooden bungs and on mixed iron hoops, staves, headings, and staples L. C. L. from St. Louis, Mo., to Denver, Col., and demand for reparation.

The rate exacted on the bungs was \$1.45, the through second class rate. It appeared that similar articles took fourth class rate of 92c. and defendants did not attempt to refute this. The mixed carloads in question merely consisted of beer kegs and hogsheads knocked down. The Western Classification provided that shipments of articles knocked down should not take higher rates than the same article set up. The rate exacted on the mixed carload, however, was considerably higher than that which would have been charged on beer kegs and hogsheads set up.

Held, (Cockrell, C.), that reparation should be awarded on the shipment of bungs on the basis of 92c., and on the mixed carload on the basis of the rate which would have been exacted on the same articles set up.

Order accordingly.

1260.—**Anderson, Clayton & Co. et al. v. Chicago, R. I. & P. Ry. Co. et al.** 18 I. C. C. Rep. 340. (May 3, 1910).

Complaint of unreasonable charge on cotton remaining on compress platforms for more than 15 days and for applying owners' patches to cotton baled in the process of compression.

The charges complained of were those exacted by the Traders' Compress Company, which did the compression for the defendant lines. It was the practice of the defendants in this vicinity to allow shippers the privilege of having the cotton compressed free of charge at points in the direction of the haul. For this service the railroad paid the compress company 10c. per 100 lbs. The cotton was shipped into the compress at a fixed rate irrespective of distance, and held there at the shipper's risk and under his exclusive control until, after receiving a sample and description of the grade, he was able to sell it and gave further routing instructions. It was then compressed at the expense of the carrier and reshipped to destination at the balance

of the through rate. Prior to January, 1909, neither the carrier nor the compress company had exacted any charge for holding the cotton at the compress but on this date the congestion became so great as to interfere materially with the business of the Compress Co., and the latter put in force a charge of 1c. per bale per day for cotton held after the 15 days' free time allowed, and of $\frac{1}{2}$ c. per bale per day on that held after 30 days. In order properly to mark cotton, it was necessary to place on the bales during compression what were known as patches. Prior to January 1, 1909, no charge had been made by the Compress Co. for placing these on the cotton, but after that date a charge of 3c. was exacted for this service. It did not appear that the carrier had anything to do with the cotton during the period of storage in the compress or took any part in placing the patches on the cotton. The Compress Company was not the agent of the carriers and the latter had not directed, authorized or required the exaction of the charge complained of.

Held, (Cockrell, C.), that as the carriers had nothing to do with the service or charges in question, the facts did not justify an order against them.

Complaint dismissed.

1261.—Coors et al. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 352, 354. (May 2, 1910).

Complaint of unreasonable rate on bottle caps and hardware from Baltimore, Md., to Denver, Col., and demand for reparation.

The complainants relied on a comparison with rates on other articles but gave no evidence as to the conditions of transportation with regard thereto. They relied also on the fact that subsequent to the shipment in question, the rate had been considerably reduced.

Held, (Knapp, Ch.), that the facts shown did not warrant an order for reparation.

Complaint dismissed.

1262.—Lull & Co. v. Minneapolis, St. P. & S. Ste. M. Ry. Co. 18 I. C. C. Rep. 355. (May 2, 1910).

Demand for reparation for alleged unreasonable charge on bran from Minneapolis, Minn., to Marshfield, Wis.

Complainant had shipped the car in question from Minneapolis to Amherst, Wis., and on its arrival, the consignee had refused to accept it. Complainant had then instructed defendant to forward it to Marshfield, Wis., a point between Minneapolis and Amherst. The regular rate from Amherst to Marshfield, 10c. per 100 lbs., was exacted for the back haul, plus a switching charge of \$2. Defendant's tariffs provided for reconsignment to points on the direct line only.

Held, (Knapp, Ch.), that the charges exacted were proper.

Complaint dismissed.

1263.—Gamble Robinson Commission Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 357. (May 2, 1910).

Demand for reparation on account of misrouting grapes from Montrose, Ia., to Rochester, Minn.

The evidence as to the routing instructions given was conflicting, but it appeared that the cheapest route was that over which the agent routing the freight would have given his own road the longest haul, while the route used was a somewhat quicker one. These facts substantiated the position of the defendants.

Held, (Knapp, Ch.), that under the evidence it did not appear that defendants' agent had misrouted the shipment.

Complaint dismissed.

1264.—Kentucky Wagon Mfg. Co. et al. v. Illinois Central R. Co. et al. 18 I. C. C. Rep. 360. (May 2, 1910).

Complaint of unreasonable rate on farm wagons from Louisville, Ky., to Sacramento, Cal., and from Toledo, O., to Portland and Eugene, Ore., and Seattle, Wash., and demand for reparation.

Prior to January, 1909, the rate in question had been \$1.25, on which date it was increased to \$1.35. In June, the \$1.25 rate was restored by reason of protests by a great number of shippers. It appeared that if the rate had been increased the articles in question would have been subject to competition by water.

Held, (Clark, C.), that the presumption attaching to the long maintenance of a lower rate and the subsequent reduction of an increase, did not apply in cases like the present where a potential water competition was present and the prior and subsequent rates forced to a low figure by reason of such competition.

Complaint dismissed.

1265.—Gund & Co. v. Chicago, B. & Q. R. Co. 18 I. C. C. Rep. 364. (May 2, 1910).

Demand for reparation for discrimination in allowance to complainant's competitor for elevation at Nebraska City and refusal to complainant.

Complainant operated elevators, among other points, at Nebraska City, where the Duff Grain Company also operated an elevator. Complaint was made of allowance to the Duff Grain Co. of 1¼c. per 100 lbs. prior to July 19th, 1907, and ¾c. subsequent to that date. The evidence did not sustain the contention as to the allowance prior to July, 1907, but showed an allowance of ¾c. subsequent to that date. In *Peavey & Co. v. Union Pacific Ry. Co.* (351-D) the Circuit Court had enjoined the enforcement of the Commission's order which held elevator allowances at these points illegal.

Held, (Lane, C.), (in an opinion discussing the Federal decision and the circumstances surrounding the elevation of grain) (a) that with all due respect to the Circuit Court, the Commission still adhered to its ruling that the allowances were unduly discriminatory and preferential, and therefore illegal;

(b) that in view of such decision, however, the present case would not be dismissed, but would be held for further action after the decision of the Supreme Court on the matters here involved.

1266.—National Mfg. Co. v. Chicago Great Western Ry. Co. et al.
18 I. C. C. Rep. 370. (May 2, 1910).

Complaint of unreasonable charge on syrup from St. Joseph, Mo., to Pullman, Wash., and demand for reparation.

The soliciting agent of the initial carrier had quoted a rate applicable over another line, believing that such rate applied over his line. On finding his mistake, he directed the transfer of the shipment to a route over which the rate quoted was in fact applicable, but this diversion had not in fact taken place. The rate quoted was 97½c. and the rate actually paid \$1.22½, and subsequently the 97½c. rate was made to apply over the route over which the shipment in fact moved.

Held, (Lane, C.), that without regard to the liability for negligence in failing to divert the car, the rate charged was in fact unreasonable and the participating carriers should make reparation on the basis of the reasonable rate of 97½c.

Order accordingly.

1267.—Block & Co. v. Louisville & N. R. Co. 18 I. C. C. Rep. 372.
(May 2, 1910).

Complaint of unreasonable rate on strawberries from Pomona, and Humboldt, Tenn., to St. Louis, Mo., and demand for reparation.

The rate from Pomona and Humboldt was the same, 39c. per 100 lbs., Pomona being a point on a spur two miles from Humboldt, where defendant had no railroad agent. The car in question was partly loaded at Pomona and then carried to Humboldt, where the earload was completed. In addition to the 39c. rate from Humboldt, defendant charged the local rate of 23c. from Pomona to Humboldt. At other points on the line, defendant's tariffs provided for concentration of earload shipments on payment of \$5 concentration charge and this privilege was to be subsequently applied to Pomona and Humboldt.

Held, (Lane, C.), that although concentration and transit privileges should not in general be given a retroactive effect for the purpose of reparation, yet in the present case the 39c. rate should apply to the entire shipment and reparation awarded accordingly.

1268.—Sackett Plaster Board Co. v. Buffalo, R. & P. Ry. Co. et al.
18 I. C. C. Rep. 374. (March 14, 1910).

Complaint of unreasonable rate on plaster board from Garbutt, N. Y., to points in New York, Pennsylvania and New England, and of discrimination in favor of plaster.

Plaster board was the manufactured product of plaster. Prior to June, 1907, a commodity rate of \$2 per ton applied to both commodi-

ties, but subsequent to that date, the sixth class rate of \$2.60 was made to apply to plaster board without disturbing the commodity rate on plaster. The board was more valuable than plaster.

Held, (Clements, C.), that in view of all the facts, the \$2.60 rate on plaster board was unreasonable and should not exceed \$2.35, on the basis of which rate reparation should be made.

Order accordingly.

1269.—*Acme Cement Plaster Co. v. St. Louis & S. F. R. Co. et al.* 18 I. C. C. Rep. 376. (May 2, 1910).

Complaint of unreasonable charge on cement plaster from Cement, Okla., to Leadwood, Mo., and demand for reparation.

The rate charged was a combination of a transportation and a switching rate, there being no joint rate in effect. The formal complaint was filed more than two years after the freight charges were paid, but it appeared that the line carrier, having subsequently filed a tariff absorbing the switching charge, had asked leave within the two years to refund such charge to the complainant.

Held, (Prouty, C.), (a) that the offer by the line carrier to absorb the switching charge did not stop the running of the Statute as to the claim for the unreasonable rate;

(b) that the offer by another carrier to absorb the switching charge did not toll the Statute as against the carrier who in fact exacted such charge.

Complaint dismissed.

1270.—*Towney Metal & Hardware Co. v. Chicago, R. I. & P. Ry. Co.* 18 I. C. C. Rep. 378. (May 2, 1910).

Complaint of unreasonable charge on woven-wire fence from Richmond, Ind., to Billings, Okla., reconsigned to Wichita, Kas., and demand for reparation.

On receipt of the freight in question at Billings, the consignee had refused to accept it, whereupon complainant notified defendant to re consign to Wichita. Complainant was charged the sum of the rate to Billings and that from Billings to Wichita. The through rate made no provision for reconsignment applicable to this haul, although there was provision for reconsignment of freight received from local points on the Chicago, Rock Island & Pacific.

Held, (Prouty, C.), that the charge of a local rate from Billings to Wichita under the circumstances was proper.

Complaint dismissed.

1271.—*Clark Co. v. Buffalo & Susquehanna Ry. Co. et al.* 18 I. C. C. Rep. 380. (May 9, 1910).

Complaint of unreasonable rate on oil in tank cars from Stanards, N. Y., to Struthers, Pa., and demand for reparation.

The rate charged was 10c., the shipment proceeding via Keating Summit, Pa., the only route available from Stanards to Struthers.

The rate to Warren Pa., a point $1\frac{1}{2}$ miles from Struthers reached also by other lines, was 10c. via Keating Summit, but was $8\frac{1}{2}$ c. via Buffalo and Wellsville, N. Y. Subsequent to the shipment in question, however, the $8\frac{1}{2}$ c. rate was made applicable from Stanards to Struthers via Keating Summit.

Held, (Clark C.), that although different rates might properly be applicable over different lines, depending on different circumstances, yet in view of the voluntary reduction and maintenance of the $8\frac{1}{2}$ c. rate, reparation should be awarded on that basis.

Order accordingly.

1272.—*Henley et al. v. Chicago, M. & St. P. Ry. Co. et al.* 18 I. C. C. Rep. 382. (May 9, 1910).

Demand for reparation for unreasonable charge on emigrant movables from Armour to Lemmon, S. D., and from Lemmon to Hettinger, N. D.

It appeared that complainant had wished to ship to Hettinger, N. D., but this point not being open for business, he had consigned to himself at Lemmon, S. D., where the freight had been accepted by his agent, and subsequently transported partly by wagon and partly by rail to Hettinger. The formal complaint was filed more than two years after the payment of the freight on the haul to Lemmon; but within two years after the payment for the subsequent part of the haul from Lemmon to Hettinger, informal complaint was made as to the rate from Armour to Lemmon.

Held, (Clark, C.), (a) that the shipment from Armour to Lemmon was intrastate;

(b) that the complaint as to the shipment from Armour to Lemmon did not toll the Statute as to the rate from Lemmon to Hettinger.

Complaint dismissed.

1273.—*Chatfield Mfg. Co. v. Louisville & N. R. Co. et al.* 18 I. C. C. Rep. 385. (May 2, 1910).

Complaint of unreasonable rate on roofing material from Carthage, O., to Nashville, Tenn., and demand for reparation, and for a mixed carload rate.

The rate charged on the material in question had varied considerably, at the time of the shipment in question being 25c. and subsequently being reduced to 19c., with a provision permitting of mixed carloads. Complainant asked for a $12\frac{1}{2}$ c. rate.

Held, (Clements, C.), that the 19c. rate with a mixing privilege was reasonable and reparation should be awarded on that basis with an order for its future maintenance.

Order accordingly.

1274.—*Willamette Pulp & Paper Co. v. Northern Pacific Ry. Co. et al.* 18 I. C. C. Rep. 388. (May 9, 1910).

Complaint of unreasonable charge on print paper from Sartells, Minn., to California points, and demand for reparation.

The shipment in question was the first made from Sartells and was made on the understanding that the 75c. rate in effect from surrounding points would be applied to it. By reason of defendants' failure to publish the rate, however, an 80c. rate was charged.

Held, (Lane, C.), that reparation should be awarded on the basis of the 75c. rate.

1275.—National Refining Co. v. Atchison, T. & S. F. Ry. Co. 18 I. C. C. Rep. 389. (May 9, 1910).

Demand for reparation, for unreasonable charge on petroleum and its products from Coffeyville, Kas., to Enid, Okla.

The rate charged was 33c. and reparation was asked in reliance on the decision by the Commission in *State of Oklahoma v. Chicago, Rock Island & Pacific Ry. Co.* (742). It appeared that complainants had refrained from instituting proceedings by reason of the pendency of the complaint of the State of Oklahoma. In the latter case, no reparation had been demanded. Defendant relied on the fact that the rates had not been paid under protest.

Held, (Lane, C.), (a) that no protest was necessary;

(b) that the pendency of the above mentioned case did not toll the Statute;

(c) that reparation should be awarded on the shipments within two years of the filing of the present complaint.

Order accordingly.

1276.—Ferguson Saw Mill Co. v. St. Louis, I. M. & S. Ry. Co. et al. 18 I. C. C. Rep. 391. (May 2, 1910).

Complaint of unreasonable rate on cypress and yellow-pine lumber from Woodson and Little Rock, Ark., to Memphis, Tenn.

The rate in question had been advanced and reduced a number of times in the years preceding the complaint, the present 14c. rate being the highest in force at any time. Defendants relied on the decision of the Commission in *Chicago Lumber & Coal Co. v. Tioga S. E. Ry. Co.* (942). The latter case, however, had been instituted by carriers.

Held, (Knapp, Ch.), (a) that the above decision was not conclusive in a subsequent proceeding by a shipper;

(b) that the rates in question were unreasonable and should be reduced to 10c. per 100 lbs.

Order accordingly.

1277.—Ferguson Saw Mill Co. v. St. Louis, I. M. & S. Ry. Co. 18 I. C. C. Rep. 396. (May 2, 1910).

Complaint of unreasonable rate on cypress lumber from Woodson and Little Rock, Ark., to points on defendant's lines in Oklahoma, Kansas and Missouri.

A short time before the filing of the complaint, the rates in question had been advanced by placing cypress lumber in the class with yellow-pine lumber and taking it out of the hard-wood tariff where it had stood for some time. This resulted in rates from Little Rock and Woodson materially higher than those on the same commodity from Memphis, Tenn., to Wynne, Ark., a haul involving similar conditions.

Held, (Knapp, Ch.), that the rates as advanced were unreasonable and should be reduced to figures stated.

Order accordingly.

1278.—Colorado Bedding Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 401, 403. (May 9, 1910).

Complaint of unreasonable rate on cotton from St. Louis, Mo., and Memphis, Tenn., to Pueblo, Col., and demand for reparation.

The complaint involved two shipments, on the first of which a \$1.67 rate had been exacted by reason of an error, defendants intending to apply a \$1.15 rate. Complainant contended that a 70c. rate was reasonable by reason of the subsequent establishment of such rate and because of the existence of a 70c. rate from Helena, Ark., to Pueblo, Col. In the case of the second shipment, reliance was placed on the fact that a lower rate than that exacted was in force over a competing line.

Held, (Cockrell, C.), that as regards the first shipment, reparation should be awarded on the basis of \$1.15 rate, but that as regards the second, the complaint should be dismissed.

Order accordingly.

1279.—Andy's Ridge Coal Co. et al. v. Southern Ry. Co. et al. 18 I. C. C. Rep. 405. (April 4, 1910).

Complaint of discrimination and preference in favor of shipments from Apalachia coal field in Virginia over those from the Coal Creek field in Tennessee, to Nashville, Tenn., Carolina territory and Georgia and Florida territory.

It appeared that the cost of producing coal in the Apalachia field was 25c. to 35c. per ton less than in Coal Creek, but that the coals were of about equal value. In shipments to Nashville, the rate from Coal Creek was \$1.25 and that from Apalachia \$1.45, for distances of 208 and about 408 miles respectively. To Carolina territory, the distance from Coal Creek was about 78 miles and from Apalachia 171 miles, but by a proposed cut-off, the distance from Apalachia would soon be shortened by 60 miles; the differential here was 25c. per ton in favor of Coal Creek, having been established by the Commission in *Black Mountain Coal Land Co. v. Southern Ry. Co.* (803). As regards shipments to Georgia and Florida territory, the movement from both fields was the same from Knoxville on, the distance from Coal Creek to Knoxville being 36 miles, and from Apalachia 213 miles, or when the proposed cut-off was in operation, 155 miles, an advantage of

119 miles in favor of Coal Creek. The local rate from Coal Creek to Knoxville was 60c. and to Atlanta \$1.35; from Apalachia to Knoxville \$1.40, and to Atlanta \$1.60, the differential being 80c. in favor of Coal Creek to Knoxville and 25c. to Atlanta, and the distance from Knoxville to Atlanta 223 miles. A fair profit in coal mining appeared to be 10c. per ton, and an advantage of 15c. per ton determined the market. It appeared also as regards rates to Georgia and Florida territory that an order against the Southern road would not control the situation, as other carriers had control of the relative rate situation so as to make it possible for them to upset a ruling directed against the Southern.

Held, (Prouty, C.), (a) that as to rates to Nashville, the differential of 25c. was not sufficient and this should be 45c., but as the movement from Coal Creek to Nashville was entirely intrastate, the Commission had no jurisdiction over the situation;

(b) that as regards shipments to Carolina territory, the 25c. differential would not be disturbed;

(c) that as regards rates to Georgia and Florida territory, the differential of 25c. was not sufficient and should not be less than 35c.

Order accordingly.

1280.—Ocheltree Grain Co. v. Texas & P. Ry. Co. et al. 18 I. C. C. Rep. 412. (May 2, 1910).

Complaint of unreasonable rate on corn from Ninnekah, Ind. Ty., to Lettsworth, La., and demand for reparation.

There was no through rate in effect, and the charges were collected on the combination rate of 45c. It was customary to apply to shipments to Lettsworth and points in that territory, the New Orleans rate plus an arbitrary of 2c. On the shipments in question, this combination would have amounted to 29½c. One of the carriers participating in the movement was not a party to the complaint and could not be brought in, as the limitation provision had run against it.

Held, (Harlan, C.), (a) that the absence of one participating carrier did not present a fatal defect to an order against the defendants;

(b) that reparation should be awarded on the basis of the 29½c. rate.

Order accordingly.

1281.—Tioga Coal Co. v. Chicago, R. I. & P. Ry. Co. et al. 18 I. C. C. Rep. 414. (May 10, 1910).

Demand for reparation for exaction of improper demurrage charge on coal cars at Pueblo, Col.

The coal in question was shipped over defendants' lines from Otumwa, Ia., to Tioga, Col. From Tioga to Pueblo the freight was to go over the Denver & Rio Grande. Tioga being a prepay station on the latter road, the Denver & Rio Grande refused to receive it, because the charges had not been prepaid. By reason of the detention, \$17

demurrage accrued and was paid to the Missouri Pacific Ry., but the tariffs of the latter road, in effect at the time, did not contain any provision authorizing the collection of demurrage on a carload shipment held in, transit because consigned to a prepay station on a connecting line on which freight charges were not prepaid.

Held, (Lane, C.), (following *Munroe & Sons v. Michigan Central Ry. Co.*), (1037), that for the reasons therein given, the demurrage charges in the case were without warrant of tariff authority, and therefore wrongfully imposed by the Missouri Pacific.

Order for reparation accordingly.

1282.—*Saunders & Co. v. Southern Express Co.* 18 I. C. C. Rep. 415. (Jan. 10, 1910).

Complaint of unreasonable express rates on fish from Pensacola, Fla., to points in Alabama, as compared to rates from Mobile, and of discrimination in favor of the latter point.

Prior to September, 1907, the fish rates from Pensacola and Mobile to Alabama points had been the same. On September 15, 1907, the Alabama Commission made great reductions in the rates from Mobile to Alabama points, for the obvious purpose of fostering the fish business at Mobile. A comparison of the Mobile rates with express rates on similar commodities for similar distances showed that they were very much below the average.

Held, (Harlan, C.), (a) that while the rate fixed by a State Commission was entitled to respectful consideration, it was not binding on the Interstate Commerce Commission as to questions under the jurisdiction of the latter;

(b) that under the evidence, the rate from Pensacola did not appear to be unreasonable nor did there appear to be undue discrimination in the compulsory maintenance of lower rates from Mobile;

(c) that although Congress might have power to prevent a preference of intrastate traffic over interstate, the present Act did not give the Commission this power;

(d) that in view of the fact that the defendants were contesting the justice of the Alabama Commission's reduction of the Mobile rates, the case would be held open for the present.

1283.—*Sunderland Bros. Co. v. Missouri, K. & T. Ry. Co. et al.* 18 I. C. C. Rep. 425. (April 11, 1910).

Complaint of unreasonable charge on Portland cement from Chanute, Kas., to Denison, Ia., and demand for reparation.

No through rate was in effect and the charges were collected on a combination on Council Bluffs of 14.9c. In prescribing the rate to Council Bluffs, the tariff published by the initial carrier, through a mistake, failed to state any minimum applicable, although the rate professed to be a carload rate less than the less-than-carload. The

shipment consisted of 38,000 lbs. and charges were assessed on a 40,000 lb. minimum subsequently established by the initial carrier and established prior to the shipment by the delivering carrier.

Held, (Harlan, C.), (a) that the rate established by the delivering carrier, being in conflict with that fixed by the initial carrier, was not a legal rate;

(b) that "when a car is demanded and loaded by the shipper and is tendered and otherwise handled as a carload, and no minimum carload weight is legally provided, the carload rate, if it makes less than the l. c. l. rate, must be applied on the actual weight."

Order for reparation accordingly on the basis of the actual weight.

1286.—*Rose et al. v. Boston & A. R. Co. et al.* 18 I. C. C. Rep. 427. (May 9, 1910).

Complaint of unreasonable less-than-carload rate on motorcycles from eastern and middle-western points to Pacific Coast terminals, and demand for reparation.

The basis of the complaint was that the rate on motorcycles should not exceed that on bicycles, complainants relying on *Merchants' Traffic Asso. v. Atchison, Topeka & Santa Fe Ry. Co.* (609). Defendants sought to justify the higher rate on motorcycles on the ground of greater value and less volume of traffic. The bicycle rate was \$3.60 and that on motorcycles \$6 per 100 lbs.

Held, (Cockrell, C.), (a) that in view of the increasing traffic in motorcycles, the same rate should be applied as on bicycles, 1½ times first class;

(b) that reparation should be denied.

Order accordingly.

1287.—*Blinn Lumber Co. v. Southern Pacific Co. et al.* 18 I. C. C. Rep. 430. (May 9, 1910).

Complaint of unreasonable rate on mining timbers from San Pedro wharf, Cal., to Charleston, Ariz., and demand for reparation.

The shipments were made January 29th, and April 11th, 1906. Freight charges, however, were not paid until January 30th, 1907, although demand was made for such charges within two weeks after delivery of the freight. The complaint was filed January 6th, 1909.

Held, (Lane, C.), (a) that although at common law the cause of action did not accrue until actual payment made so as to form a basis of recovery, this rule was necessarily modified by the provisions of the Act;

(b) that under the Act a carrier could not prevent liability for giving a rebate by maintaining a running account with a shipper;

(c) that on delivery of the shipment, the obligation rested on the carrier to make collection and on the shipper to pay the rate;

(d) that "the period of two years within which this Commission is allowed to award damages for acts arising under violations of the provisions of this act begins to run at the time when the shipment is

delivered and when it becomes the legal duty of the carrier to collect its lawful charges."

Complaint dismissed.

Harlan, C., concurred on the ground that although there could be no recovery of damages unless the unlawful rate was paid, yet the bar of the Statute began to run when the obligation of the shipper to pay the unlawful rate became a completed obligation on the delivery of the shipment to him at destination, and the running of the Statute could not be postponed by the failure of the shipper to fulfil his obligation.

Cockrell, C., with whom concurred Prouty, C., dissented on the ground that the language of the Act was clear and the decision of the majority was obviously intended as remedial legislation.

1288.—Blodgett Milling Co. v. Chicago, I. & S. R. Co. et al. 18 I. C. C. Rep. 439. (May 18, 1910).

Complaint of unreasonable rate on buckwheat from interstate points to Janesville, Wis., and demand for reparation.

The shipments moved in October and November, 1906, payment of charges was delayed until June, 1909, and complaint filed August, 1909.

Held, (Lane, C.), (on authority of *Blinn Lumber Co. v. Southern Pacific Co.*), (1287), that the complaint should be dismissed.

Cockrell and Prouty, C. C., dissented.

1289.—Lesser v. Georgia R. et al. 18 I. C. C. Rep. 478. (May 9, 1910).

Complaint of unreasonable rate on burnt cotton from Augusta, Ga., to Lockland, O.

The rate exacted was the regular cotton rate of 53c. There was in effect a rate of 20c. on mixed jute and cotton refuse, and complainant contended that burnt cotton should take the same rate as cotton refuse. As a practical matter, however, it was very difficult to distinguish between cotton which was so burnt as to spoil it and slightly burnt cotton.

Held, (Harlan, C.), that the 53c. rate as applied to burnt cotton was not unreasonable.

Complaint dismissed.

1290.—Frederich & Kempe Co. et al. v. New York, N. H. & H. R. R. Co. et al. 18 I. C. C. Rep. 481. (May 3, 1910).

Complaint of unreasonable rates from Trunk Line points to Red Wing, Minn., and of preference of surrounding localities.

Prior to May, 1908, Red Wing was on the St. Paul basis in respect to shipments from Trunk Line points as well as with respect to those from Central Freight Association Territory. On that date, however, certain arbitraries were applied to Red Wing and to several other points, above the St. Paul rate. These arbitraries were removed in August, 1908, as regards all the points except Red Wing. In October,

1908, Red Wing was given the St. Paul rate again, but in June, 1909, the arbitraries were re-established as to Red Wing and had since been maintained. Defendants alleged that if Red Wing be placed on the St. Paul basis, rates as to a number of other points west thereof would have to be changed, but this did not appear to be the case.

Held, (Knapp, Ch.), that under all the facts Red Wing should take no higher rates from Trunk Line territory than were maintained to St. Paul.

Order accordingly.

1291.—Duluth & Iron Range R. Co. v. Chicago, St. P., M. & O. Ry. Co. et al. 18 I. C. C. Rep. 485. (May 10, 1910).

Demand for reimbursement by initial carrier against connecting line on account of damages for misrouting, collected from complainant on account of a shipment over the lines of complainant and defendants.

The complainant had received at Ely, a station on its line in Minnesota, a carload of lumber consigned to a point in Missouri. The consignor had noted routing instructions on the bill of lading which, if followed, would have provided for the cheapest available rate. When the complainant delivered the shipment to the defendant at its junction, it did not note the consignor's routing instructions on the transfer billing. The defendants' agent thereupon routed the freight by a more expensive route, producing a total charge of 13c. per 100 lbs. over that which would have been exacted if the original routing had been followed. This 13c. the shipper collected from the complainant, and the complainant here attempted to recover it back from the connecting line.

Held, (Harlan, C.), (a) that under Rule 214 of Conference Bulletin No. 4, a carrier having adjusted a claim for misrouting, and finding that the responsibility rested with a connecting line, might apply to the Commission to have the connecting line reimburse it;

(b) that the complainant, the initial carrier in this case, had failed in its duty to note the proper routing on the transfer billing;

(c) that the defendant, the connecting line, had also failed in its duty in not routing the freight in the cheapest possible manner;

(d) that the error of the initial carrier did not relieve the connecting line of its responsibility for the misrouting in the present case, and the defendant should reimburse the complainant;

(e) (semble) that larger lines and systems should ordinarily relieve the small initial carriers of the responsibility for correct routing, by reason of their wider opportunities for knowing what are reasonably direct routes.

Order accordingly awarding complainant reparation.

1292.—Bayou City Rice Mills et al. v. Texas & N. O. R. Co. et al. 18 I. C. C. Rep. 490. (May 9, 1910).

Complaint of unreasonable rates on rice from Houston, Tex., to

New Orleans, La., and of discrimination against Houston in refusal of storage-in-transit and reconsignment privileges.

Complainants manufactured rice at Houston. At this point there were provided storage-in-transit and reconsignment privileges on rice destined to New Orleans, but similar privileges were not accorded at Louisiana points on rice destined to Houston. A number of the carriers reaching the Louisiana points were not parties and some of the defendants did not extend as far as New Orleans. The rate from Houston was 19c., while Clinton, Tex., a point 8 miles south of Houston,—Houston being intermediate,—had a rate of 15c. on rice coming to Clinton from certain specified plantations, and the transportation from it to Clinton was wholly by water. The 15c. rate allowed Clinton was the result of an effort by the carriers to secure the rice from certain plantations which could either send it to New Orleans direct by water, or send it by water to Clinton and from there by rail.

Held, (Knapp, Ch.), (a) that irrespective of the fact that the evidence did not disclose the circumstances and conditions surrounding the traffic at the Louisiana points, the absence of the necessary carriers precluded the Commission from making any order with regard to the storage-in-transit and reconsignment privileges in question;

(b) that the 15c. rate from Clinton was properly less than that from Houston by reason of water competition;

(c) that a carrier might not lawfully make rates lower than its established rates to a given point dependent on the freight's having come to the point of origin by wagon or similar conveyance;

(d) that the rates from Clinton should be open to all shippers desiring the transportation of rice from that point.

Complaint dismissed without prejudice.

1293.—Noble v. Toledo & Western R. Co. et al. 18 I. C. C. Rep. 494. (May 10, 1910.)

Demand for reparation by reason of misrouting a shipment of coiled elm hoops from Pioneer, O., to Covesville, Va.

The shipment was forwarded without routing instructions and went by a 35c. rate although there was in effect a rate of 24½c. by another route. The initial carrier was a short electric line, which turned the shipment over to the Wabash Railroad without routing instructions. The reason that the Wabash did not forward the shipment over the cheapest route was that the carriers, parties to the joint rate, had not agreed on divisions. Over the route by which the shipment proceeded, the electric line received 4c., whereas under the lower joint through rate it would have received but 3c.

Held, (Clark, C.), that in accordance with the decision in *Duluth & Iron Range R. R. Co. v. Chicago, St. Paul, Minn. & Omaha Ry. Co.* (1291) the responsibility for the misrouting rested on the Wabash, and that road should pay reparation, the electric line, however, to

receive no more than its division of the joint rate which should have been followed.

Order accordingly.

1294.—Central Lumber Co. v. Chicago, M. & St. P. Ry. Co. et al.
18 I. C. C. Rep. 495. (May 25, 1910.)

Demand for reparation by reason of alleged unreasonable charge on lumber from Washington points to Scranton, N. Dak., via Aberdeen, S. Dak.

Prior to July, 1908, there was no physical connection at Aberdeen between the lines of the Great Northern and the Chicago, Milwaukee & St. Paul. The complainant, from June, 1907, to June, 1908, shipped lumber to Aberdeen at the local rates in anticipation of the establishment of a connection, and after this was made, re-shipped from Aberdeen to Scranton at the local rate. It contended that it should be given the benefit of a proportional rate subsequently applied from Aberdeen to Scranton on lumber coming from the northwest.

Held, (Harlan, C.), that the shipments were entirely local and the demand for reparation should, therefore, be dismissed.

1295.—Snyder-Malone-Donahue Co. v. Chicago, B. & Q. R. Co. et al.
18 I. C. C. Rep. 498. (June 2, 1910.)

Complaint of unreasonable rate on stock cattle from South Omaha, Neb., to Cushman, Mont., and demand for reparation.

The complaint was based on the fact that there was a lower rate to a nearby point via another line and also on assertion by defendants' agent prior to the shipment that this lower rate would be protected by defendants.

Held, (Clark, C.), that neither of the above considerations were sufficient to show the rate to be unreasonable or to entitle the complainant to reparation.

Complaint dismissed.

1296.—Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al.
18 I. C. C. Rep. 500. (June 2, 1910.)

Complaint of unreasonable rate on iron conveyor chains, link belt-ing, and machinery sprocket chains from East Moline, Ill., to New Orleans, La., and demand for reparation.

The rate charged was 41c., being the ordinary machinery rate. The complainant contended that 26c. was the proper rate, this being the regular commodity rate on chains, packed. The chain in question was riveted together in bundles, but was not packed in the sense that it had any form of outside covering. The chain shipped was used for the transmission of power.

Held, (Clark, C.), that the chain in question was properly classed as machinery and was not entitled to the lower rate.

Complaint dismissed.

1297.—Columbia Grocery Co. v. Louisville & N. R. Co. 18 I. C. C. Rep. 502. (June 2, 1910.)

Complaint of unreasonable rate on sugar from New Orleans, La., to Columbia, Tenn., and of discrimination in favor of Nashville, Tenn., and Decatur, Ala., and violation of section 4.

The rate from New Orleans to Columbia was 31c., while that to Nashville was 15c. and to Decatur, 24c. The Columbia rate was made on a Nashville combination although Nashville was a more distant point on the same line. The competition by water to Nashville, however, was very strong, while to Columbia it did not exist.

Held, (Clark, C.), that under the decisions of the Supreme Court, the rate relation in question did not present a violation of the Act. Complaint dismissed.

1298.—Spring Hill Coal Co. v. Erie R. Co. et al. 18 I. C. C. Rep. 508. (June 2, 1910.)

Demand for establishment of through route and joint rate on coal between Jermyn, Pa., and points in New York, via Carbondale, Pa.

The defendants in their answers alleged that there was already a through route and joint rate between the points in question and complainant thereupon requested that the case be dismissed.

Order accordingly.

1299.—The Canadian Valley Grain Co. v. Chicago, R. I. & P. Ry. Co. et al. 18 I. C. C. Rep. 509. (June 2, 1910.)

Demand for reparation by reason of failure to post rates on snapped corn from Calvin, Okla., to Arkadelphia, Ark.

The defendants had no joint through rate between the points in question. Complainant inquired of the Rock Island agent at Calvin the rate between the points, and was quoted 24½c. He thereupon made a quotation to his vendee based on this rate, but was subsequently required to pay the tariff combination local rates of 29½c. The Rock Island had posted at Calvin its local rate to Little Rock, the junction with the Iron Mountain Road, but not the combination rate to destination.

Held, (Cockrell, C.), that where there is no through route and joint rate between two points, the duty of the carrier in regard to posting rates is satisfied by posting the separately established rate applicable to through transportation over its own line.

Complaint dismissed.

1300.—Sunderland Bros. Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 512.

Complaint of unreasonable rate on soft coal from Christopher, Ill., to Ainsworth and Valentine, Nebr., and demand for reparation.

Complainant relied principally on a comparison of ton-mile rates

to nearby points. The rate charged produced but about 5 mills per ton-mile.

Held, (Cockrell, C.), that the rate did not appear to be unreasonable.

Complaint dismissed.

1301.—Henderson & Barkdull v. St. Louis, I. M. & S. Ry. Co.
18 I. C. C. Rep. 514. (June 2, 1910.)

Demand for reparation for freight paid on cotton destroyed by fire at a transit point.

Complainant had shipped uncompressed and compressed cotton under transit rates to Ft. Smith, Ark. It was there destroyed by fire. Under defendant's tariffs the transit privilege extended from September 1st, 1908, to August 31st, 1909. Subsequent to the fire, the defendant extended the privilege of reshipping other cotton under the transit rates to December 31st, but too late for complainant to avail himself of this privilege. Complainant contended that he should have been allowed to ship other cotton, on production of his expense bills, at any time prior to October 31st, 1909.

Held, (Cockrell, C.), that to allow the relief asked for would open a wide door for the unlawful substitution of local cotton.

Complaint dismissed.

1302.—Fathauer Co. v. St. Louis, I. M. & S. Ry. Co. et al. 18
I. C. C. Rep. 517. (June 2, 1910.)

Complaint of unreasonable and illegal rate on hard-wood lumber from Shults, Ark., via Blissville, Ark., to Chicago, and demand for reparation.

The Bliss-Cook Oak Co. owned all the capital stock of a tap line road running between Schults and Blissville, the yards of the Bliss Company being located at Blissville in such a way that lumber there could practically be loaded on the switch of the Iron Mountain Road at Blissville. The tap line road had not filed any tariffs nor did it maintain a freight or passenger station or do any public business to amount to anything, its services being practically restricted to hauling the lumber of its stockholder. The defendants required lumber loaded at Blissville to be rated from Schults at 1c. per 100 lbs. above the Blissville rate, the tap line road being allowed 2c. per 100 lbs. Complainant purchased lumber at Blissville and shipped it to itself at Chicago, and was required to pay the Schults rate. The formal complaint was filed more than two years after the shipment moved, but an informal complaint had been filed within the two years.

Held, (Cockrell, C.), (a) that the Blissville rate should be applied to the shipment in question;

(b) that the service by the tap line was entirely as a plant facility for the lumber company, and under the decision in *Star Grain Co.*

v. Atchison, Topeka & Santa Fe Ry. Co. (703-B) the allowance was improper;

(c) that the informal complaint stopped the running of the Statute of Limitations;

(d) that reparation should be awarded on the basis of the Blissville rate, but no order would be issued for the present with reference to the tap line divisions.

1303.—**Bash Fertilizer Co. v. Wabash R. Co. et al.** 18 I. C. C. Rep. 522. (June 2, 1910.)

Complaint of unreasonable rate on phosphate rock and acid phosphate from Baltimore, Md., and Buffalo, N. Y., the Tennessee phosphate fields and Washington Court House, O., to Prairie Switch, Ind., demand for the same rate on acid phosphate as on crude phosphate rock, and for transit privileges at Prairie Switch on commercial fertilizer shipped in as acid phosphate.

Complainant manufactured fertilizer at Prairie Switch by adding to acid phosphate, shipped in from other points, a large amount of other commodities produced at Prairie Switch. It appeared that acid phosphate was readily injured by exposure to moisture, while phosphate rock was not. The Commission discussed the ton-mile rates from the various points in question and the conditions under which the traffic was handled.

Held, (Cockrell, C.), (a) that although the carriers might rate acid phosphate and crude rock together, they were not bound to do so;

(b) that in view of the large additions to the phosphate rock at Prairie Switch in the manufacture of fertilizer, transit privileges were properly denied;

(c) that the rates from Buffalo and Washington Court House were unreasonable and should be reduced to figures indicated, but the other rates were not unreasonable.

Order accordingly.

1304.—**De Bary & Co. v. Louisiana Western R. Co. et al.** 18 I. C. C. Rep. 527. (June 3, 1910.)

Demand for reparation for misrouting champagne from Antwerp, Belgium, to Seattle, Wash.

There was no dispute as to the misrouting, but the rate for a part of the distance over which the shipment was made, namely, from San Francisco to Seattle, was a port to port rate not filed with the Commission.

Held, (Clements C.), that "damages for misrouting are based on the difference in the rate charged and the lower rate applicable via the route directed by shipper or which the carriers should have used in the absence of any instructions, but to determine the damage all factors in the claimed route must be subject to the Commission's jurisdiction and filed in the manner prescribed by law."

Complaint dismissed.

1305.—Hager Iron Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 529. (June 3, 1910.)

Complaint of unreasonable rate on steel plates from Breckenridge, Pa., to Houston, Tex., and demand for reparation.

The rate charged was a combination rate of 59c., made of the rail rate over the Pennsylvania to New York with a joint water and rail rate beyond. There was in effect at the same time a combination rate of 32c. but this was made partly of the port to port rate from New York to Galveston which was not on file with the Commission.

Held, (Clements, C.), that the port to port rate not filed with the Commission could not be used as a part of the possible combination on the basis of which reparation might be awarded in a case like the present.

1306.—Plummer Co. v. Northern P. Ry. Co. 18 I. C. C. Rep. 530. (June 2, 1910.)

Complaint of unreasonable rate on sawdust from East Grand Forks, Minn., to Minnewauken, N. Dak., and demand for reparation.

The rate exacted was a commodity rate of 20c. At the same time there was in effect a rate on wood for fuel of 8c. per 100 lbs. A number of other carriers in the vicinity hauled sawdust at the same rate charged for fuel wood. Sawdust was a low grade commodity valued at but about \$1.50 per ton.

Held, (Cockrell, C.), that the rate on sawdust should not exceed the fuel wood rate of 8c., and reparation should be awarded accordingly.

1307.—Commercial Club of Omaha v. Anderson & S. R. Ry. Co. et al. 18 I. C. C. Rep. 532. (June 2, 1910.)

Complaint of unreasonable rate on lumber from producing territory in Arkansas, Louisiana, Mississippi and Texas to Omaha, and South Omaha, Neb., and Council Bluffs, Ia., and demand for reparation.

In *Lincoln Commercial Club v. Chicago, Rock Island & Pacific Ry. Co.* (616), the Commission had held that the existing rate to Lincoln, 24c., should not exceed that to Omaha, 23c. In compliance with this order, the carriers increased both rates to 25c., effective June 1st, 1908. In *Greater Des Moines Committee v. Chicago Great Western Ry. Co.* (696), the Commission held that the existing rate to Des Moines, 27½c., should not exceed that to Omaha, and in compliance with this order the defendants raised the Omaha rate to 26½c., and lowered the Des Moines rate to the same figure, effective August 25th, 1908. The present rate to Kansas City was 24c. and to Chicago 26c., but complainant conceded the consistency of a lower rate to Kansas City than to Omaha. Formerly there had been strong competition of white pine from the northwest with the yellow pine lumber, but this competition had now largely disappeared. Defendants contended that the present rate was reasonable because the

traffic moved freely under it, and also disputed the right of the members of the complainant club to receive reparation.

Held, (Clark, C.), (a) that the Commission would not condemn the advance of the Omaha rate to 25c., but the subsequent advance to 26½c. was unreasonable;

(b) that the fact that the traffic moved freely did not conclusively show that the rate in question was reasonable;

(c) that under the decision in *Kindelon v. Southern Pacific Co.* (1084), reparation should be awarded to the members of the complainant club upon proper complaint and showing irrespective of the profits accruing from their respective businesses, but on the basis that the rate charged exceeded the rate herein found to be reasonable.

1308.—Henderson Elevator Co. v. Louisville & N. R. Co. 18 I. C. C. Rep. 538. (June 3, 1910.)

Complaint of unreasonable rate on ear corn from Enfield, Ill., to Henderson, Ky., and demand for reparation.

The rate charged was a tariff rate of 7.08c., the shipment having originated on connecting lines beyond Enfield. The defendant had, established applicable to such shipments, a proportional rate of 3c. on all surrounding points except Enfield and had intended to establish the same rate applicable to shipments via Enfield.

Held, (Knapp, Ch.), that reparation should be awarded on the basis of the 3c. rate.

1309.—Davies v. Louisville & N. R. Co. et al. 18 I. C. C. Rep. 540. (June 3, 1910.)

Complaint of unreasonable charge for loading and furnishing material and placing dunnage on shipments of fruits and vegetables from Gibson and Humboldt, Tenn., to Chicago, Ill.

The tariffs of the defendants provided that if the shipper desired, the company would, at the shipper's expense, load fruit and vegetables and supply and place dunnage and braces at the actual cost of the service. It did not appear that the rates charged exceeded the cost of the service. Complainant contended that it was defendants' duty to load, strip and brace carload shipments at their own expense since the service was included in the carload rate. The tariffs, however, provided that shippers should load and unload carload shipments. From the evidence, it appeared that although less-than-carload shipments were loaded, unloaded and braced by the carriers, the charge on carload shipments in addition to the charge for loading, bracing, etc., exceeded in the aggregate the rate which would have been applied to carloads at the less-than-carload charge. No complaint, however, was made of either the carload or less-than-carload rates.

Held, (Knapp, Ch.), (a) that the loading, unloading, bracing, etc., charges, not appearing to exceed the cost of service, could not be found to be unreasonable;

(b) that as no complaint was made of the total carload charge, no order would be made with regard to it, but the discrepancy should be called to the attention of the defendants.

Complaint dismissed.

1310.—Sunderland Bros. Co. v. St. Louis & S. F. Ry. Co. et al.
18 I. C. C. Rep. 545. (June 3, 1910.)

Complaint of unreasonable rate and minimum weight on lime from Ash Grove, Mo., to Pine Bluffs, Wyo., and demand for reparation.

Two shipments were made by defendant, one of 24,000 lbs. and the other of 30,000 lbs., the first at the rate of 34c. and the second at the rate of 29c. Defendants conceded that any charge over 27c. with a 30,000 lb. minimum was unreasonable, but complainants attacked the 30,000 lb. minimum. It appeared that lime was usually shipped in 120-barrel lots of 24,000 lbs. and that 24,000 lbs. was the usual minimum to other points in the vicinity.

Held, (Knapp, Ch.), that the 24,000 lb. minimum was reasonable and reparation should be awarded on that basis with a 27c. rate.

Order accordingly.

1311.—Wilburine Oil Works, Ltd. v. Pennsylvania R. Co. et al.
18 I. C. C. Rep. 548. (June 3, 1910.)

Demand for reparation for misrouting oil from Edgewater, N. J., to Struthers, Pa.

It appeared that the rate charged was the tariff rate via the route over which the shipment was routed by the shipper. The east-bound rate over the same route was, however, lower.

Held, (Knapp, Ch.), (a) that the fact that the east-bound rate was lower than the west-bound did not prove the latter to be unreasonable;

(b) that the shipper's own routing having been followed by the carrier, the complaint should be dismissed.

1312.—Stacy Mercantile Co. v. Minneapolis, St. M. & S. Ste. M. Ry. Co. et al. 18 I. C. C. Rep. 550. (June 3, 1910.)

Complaint of unreasonable rate on apples from Washington points to points in North Dakota and of preference of other points similarly situated in Washington by lower rates therefrom.

The tariff rate was \$1. The rate charged, however, through an error, was 75c. A 60c. rate was applicable to nearby points similarly situated, and the defendants were willing that reparation should be awarded on that basis. There was no evidence as to the reasonableness or the unreasonableness of the rate in question.

Held, (Knapp, Ch.), (a) that there had been an undercharge of 25c. on the shipments in question;

(b) that without passing on the reasonableness of the rate as exacted, or to be applied in the future, reparation should be awarded, because of unlawful discrimination, on the basis of the 60c. rate.

1313.—Borgfeldt & Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 552. (June 3, 1910.)

Complaint of unreasonable charge on various commodities from Hamburg, Germany, to California terminals.

The shipments in question proceeded on through bills of lading from Hamburg to California. The steamer, owing to an accident, was delayed almost a month and between the date when she should have arrived and the date of actual arrival, the joint through rates from Hamburg to California were cancelled and higher rates from New Orleans to California put in effect. The charges were exacted on the basis of the latter rate.

Held, (Knapp, Ch.), that in accordance with Conference Ruling No. 111, November 12th, 1908, the joint through rate via the ocean carrier not being within the jurisdiction of the Commission, the Commission could not recognize such a rate as a basis for reparation.

Complaint dismissed.

1314.—Serry v. Southern Pacific Co. et al. 18 I. C. C. Rep. 554. (June 3, 1910.)

Demand for reparation for unreasonable rate on lumber from Oregon City, Oreg., to Cripple Creek, Colo.

The rate charged was 69c., made up of a joint rate of 50c. to Colorado Springs, with a local of 19c. beyond. The 50c. part of the rate had formerly been but 40c., the latter rate having been voluntarily established and maintained for a considerable period. The advance to 50c. had been condemned by the Commission in various proceedings, and a 40c. rate re-established subsequent to the shipment in question. The 19c. rate was alleged to be unreasonable on the ground that a proportional rate of 7c. was applied from Colorado Springs to Cripple Creek, limited to shipments of lumber produced at points in Colorado and New Mexico. The lumber produced at these points was inferior in quality and could not proceed unless a special low rate was applied to it.

Held, (Knapp, Ch.), (a) that the part of the rate to Colorado Springs was unreasonable to the extent that it exceeded 40c.;

(b) that it was not *per se* unlawful to make a proportional rate lower than a local rate and limit the application of that proportional to traffic coming from a specified territory;

(c) that the 19c. rate was not unreasonable.

Order for reparation on the basis of 10c. per 100 lbs.

1315.—Acme Cement Plaster Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 557. (June 3, 1910.)

Demand for reparation by reason of defendants' neglect to preserve intact tags on returned empty wall-plaster bags.

Complainant sold wall plaster to the trade in certain bags and

had the bags reshipped to it with tags thereon, by which it could identify the customer to whom the plaster has been sold. On receipt of the bags, it allowed the customer 10c. off for each bag. If the tags were lost, although the bags being properly labeled were returned to complainant, it was not able to credit the proper customer with the returned bags. In the present case 80 bags were returned to complainant, the tags being lost, and it demanded \$8 by reason of that loss.

Held, (Prouty, C.), that irrespective of defendants' duty properly to preserve the tags in question, the damages suffered by reason of neglect of this alleged duty were not such as to come within the jurisdiction of the Commission.

Complaint dismissed.

1316.—**Cameron & Co., Inc. v. Texas & P. Ry. Co. et al.** 18 I. C. C. Rep. 560. (June 3, 1910.)

Demand for reparation for misrouting lumber from Provencal, La., to Santa Rita, N. Mex.

There was no dispute as to the misrouting, the only question being as to whether the damage should be paid by the Texas & Pacific, the initial carrier, or the Atcheson, Topeka & Santa Fe, the connecting line. The Texas & Pacific relied solely on having inquired of the Santa Fe a rate over the route in question on a previous date with reference to other shipments.

Held, (Prouty, C.), that reparation should be awarded against the Texas & Pacific which was the sole line responsible.

Order accordingly.

1317.—**League of Southern Idaho Commercial Clubs v. Oregon S. L. R. Co. et al.** 18 I. C. C. Rep. 562. (June 6, 1910).

Complaint of unreasonable rate on coal in earloads from Rock Springs, Kemmerer and Diamondville, Wyo., to twelve specified points in Idaho, and violation of section 4.

The rate in question was \$4 per 100 lbs. which was the same to more distant and to intermediate points.

Held, (Cockrell, C.), (a) that the same charge to more distant points was not a violation of section 4.

(b) that in view, however, of the same charge to Portland, a much more distant point, the rate to the twelve points in question should not exceed \$3.50 for the future.

Order accordingly.

1318.—**Ouerbacker Coffee Co. v. Southern Ry. Co. et al.** 18 I. C. C. Rep. 566. (June 3, 1910.)

Complaint of unreasonable charge on sealed packages of coffee containing premiums.

The tariffs of the Southern, Official and Western Classifications, set out in the opinion, permitted the inclusion, in carload and less-

than-carload shipments, of printed advertising matter, or of articles for advertising purposes limited to a given per cent. of the gross weight of the package. Complainants included, with the coffee, articles such as toys, tumblers and spoons. The southern roads contended that these were not "advertising premiums" but "gifts and prizes."

Held, (Clark, C.), (a) that the object of the inclusion of the articles in question being to induce the customer to purchase a particular brand of goods, it was unreasonable for the Southern Classification carriers to permit the inclusion of certain articles for advertising purposes and to exclude those which the complainant desired to ship;

(b) that the Official Classification rule was broad enough to cover the complainant's goods;

(c) that the articles in question should be carried as advertising premiums by all of the carriers defendant and should not be rated at the rates applicable to such premiums when shipped in separate packages.

Order accordingly.

1319.—Colorado Coal Traffic Assn. v. Colorado & S. Ry. Co. et al.
18 I. C. C. Rep. 572. (June 2, 1910.)

Complaint of unreasonable rate on coal from Walsenburg district in Colorado to points in Nebraska on the Chicago & North Western between Chadron and Stuart, and to Belle Fourche, S. Dak., and of discrimination in favor of Rock Springs, Wyo.

It appeared that Walsenburg and Rock Springs were approximately equidistant from the points in question. To points north of Dakota Junction, Walsenburg coal took lower rates than were charged from Rock Springs by reason of competitive conditions, but to points east of Dakota Junction, where similar competitive conditions did not exist, Walsenburg took the same rates as Rock Springs. This circumstance was relied on as creating an undue preference of Rock Springs. It was also contended by complainant that since it cost more to mine coal at Walsenburg than at Rock Springs, the Walsenburg coal was entitled to a lower rate. Rates from Hudson and Hanna, Wyo., were also investigated and discussed in comparison with the Walsenburg rates.

Held, (Knapp, Ch.), (a) that the higher cost of mining the Walsenburg coal did not entitle it to lower rates;

(b) that the fact that Walsenburg coal took lower rates to certain competitive points did not entitle it to lower rates where such competition did not exist;

(c) that no higher rate should be maintained from Walsenburg than from Rock Springs, but lower rates need not be allowed Walsenburg.

Order accordingly.

1320.—Pankey & Holmes v. Central New England Ry. Co. et al.
18 I. C. C. Rep. 578. (June 3, 1910.)

Complaint of unreasonable rates on apples from Mount Ross and Elizaville, N. Y., to Birmingham, Ala.

The sole basis of the complaint was that a lower rate was allowed via a much shorter route.

Held, (Clements, C.), that the complaint should be dismissed.

1321.—Texas Grain & Elevator Co. v. Chicago, R. I. & P. Ry. Co. et al. 18 I. C. C. Rep. 580. (June 7, 1910.)

Complaint of unreasonable rate on snapped corn from Ninnekah and Addington, Okla., to Clarksville, Tex., and demand for reparation.

The rates charged were, on one shipment 28¾c., and on another 21¼c. These rates were alleged to be unreasonable in so far as they exceeded the rates on shelled corn, which were 23c. and 17c. respectively. Complainant relied on the decision in Ocheltree Grain Co. v. St. Louis & San Francisco R. R. Co. (574). Snapped corn was a less valuable commodity than shelled corn, but could be loaded to the full capacity of the car.

Held, (Knapp, Ch.), that the rates in question were unreasonable in so far as they exceeded 23c. and 17c. respectively and reparation should be awarded accordingly.

1322.—Stott v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 582. (June 3, 1910.)

Complaint of unreasonable rate on flour from Detroit to New York and New England points and of preference of western millers by the rate adjustment.

The rate on flour from Detroit to New York was 16c. and to New England points 18c. There was in force an ex-lake rate on wheat from Detroit of 12½c. On all-rail grain, Detroit millers had a milling-in-transit privilege at a small additional payment. The all-rail milling-in-transit rate did not stipulate that the identical wheat be sent on, so that the complainant, by reason of sales of flour in Detroit, was able to ship on the greater part of his flour at the milling-in-transit rate, the actual rate paid on shipments to New England points being not 18c. but between 13c. and 14c. The prayer of the complainant was virtually that the 12½c. rate on wheat coming by water to Detroit should be applied on the flour made from that wheat. He relied on the case of Hecker Milling Co. v. Baltimore & O. Ry. Co., (702-A and 702-B). It appeared, however, that while the Hecker Company was enabled to keep the export grain and its product entirely distinct from the domestic wheat flour, in the present case complainant could not do this since the grain coming by water and by rail was mixed together in making flour.

Held, (Prouty, C.), (a) that in view of the practical differences between the Hecker-Jones case and the present, that case could not be regarded as controlling;

(b) that without expressing an opinion as to the legality of the ex-lake rate lower than the local, yet in view of the practical effects of the rate charged as above shown, the discrimination existing could not be pronounced undue;

(c) (semble) that if changes could be made in the complainant's method of doing business whereby the flour from the ex-lake grain could be kept distinct, a different question might be presented.

Complaint dismissed.

1324.—Lebanon Paper Co. v. Elgin, Joliet & Eastern Ry. Co. et al.
18 I. C. C. Rep. 591. (June 2, 1910.)

Demand for reparation for misrouting alum from Chicago Heights, Ill., to Lebanon, Oreg.

The car in question might have moved either via Portland at 87c., or via Sacramento at \$1.02½. The movement was actually via Sacramento, without routing instructions from complainant.

Held, (Lane C.), that reparation on the basis of the 87c. rate should be awarded.

1325.—National Petroleum Assn. et al. v. Missouri Pacific Ry. Co. et al.
18 I. C. C. Rep. 593. (June 2, 1910.)

Complaint of unreasonable rates on petroleum from Coffeyville, Kas., to Memphis, Tenn., and Omaha, Neb., and preference of Whiting, Ind. and other northern points.

As to the question of preference, it appeared that the carriers serving the points alleged to be preferred were not the same as those serving Coffeyville. On comparison, however, with rates to surrounding points,

Held, (Lane, C.), that the existing rate from Coffeyville to Memphis of 23c. was unreasonable in so far as it exceeded 19c., and that from Coffeyville to Omaha of 22c. was unreasonable in so far as it exceeded 17c.

Order accordingly.

1327.—Winters Metallic Paint Co. v. Chicago, M. & St. P. Ry. Co. et al.
18 I. C. C. Rep. 596. (June 2, 1910.)

Complaint of unreasonable rate on ground iron ore from Iron Ridge Junction, Wis., to Spokane, Washington and Denver, Colo., and demand for reparation.

With reference to the first shipment, the rate charged was \$1.04, being a combination rate on Portland. Shortly after the shipment, the rate to Spokane was made equal to the Portland rate and defendant was willing to make reparation on this basis. With reference to the shipment to Denver, it appeared that shortly before the shipment the rates were advanced 25 per cent. because more revenue was needed to defray the cost of operating expenses, the rate charged was 42½c. From the evidence it did not appear that the increase

in operating expenses warranted such a high increase on a low grade commodity.

Held, (Lane, C.), that reparation should be awarded on the first shipment on the basis of the 60c. rate, and on the second on the basis of the 37½c. rate, the rates found to be reasonable.

1328.—Quammen & Austad Lumber Co. v. Chicago Great Western R. Co. et al. 18 I. C. C. Rep. 599. (June 2, 1910):

Complaint of unreasonable rate on stucco from Gypsum, Ia., to Lemmon, S. Dak., and demand for reparation.

The only evidence on the part of the complainant was that subsequent to the shipment, there was established a joint through rate lower than the sum of the locals charged.

Held, (Lane, C.), that the mere fact that a lower rate was subsequently made effective by the carrier did not warrant a finding that the former rate was unreasonable nor a grant of reparation thereon.

Complaint dismissed.

1329.—Highland Iron & Steel Co. v. Vandalia R. Co. et al. 18 I. C. C. Rep. 601. (June 2, 1910.)

Complaint of unreasonable rate on bar, boiler, band, and rod iron and steel from Terre Haute, Ind., to Louisville, Ky., and Cincinnati and Dayton, O., in comparison with rates from competing localities.

Up to 1907 it appeared that Terre Haute enjoyed no advantage in reaching the Louisville and Cincinnati markets over its competitors, but in that year it was given an advantage in rates to Louisville of 9½c., to Cincinnati of 9c., and to Dayton of 10c. In August, 1909, however, these rates were advanced to 12½c., 11½c. and 12c. respectively. In 1910, the rates were reduced to 11c. to Louisville, and to 11½c. to Cincinnati and Dayton. On investigation of the general rate situation,

Held, (Lane, C.), (a) that although the rates of 1909 justified the complaint as discriminatory against Terre Haute, the change of rates since the filing of the complaint successfully avoided that charge;

(b) that the present rates were not unreasonable.

Complaint dismissed.

1330.—National Rolling Mill Co. v. Baltimore & O. S. W. R. Co. 18 I. C. C. Rep. 604. (June 2, 1910.)

The question involved in this case was the same as that in Highland Iron & Steel Co. v. Vandalia Ry. Co. et al., (132), and in accordance with the decision in that case,

Held, (By the Commission) that the complaint should be dismissed.

1333.—Wilson Produce Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 1. (June 10, 1910.)

Complaint of unreasonable charge on watermelons diverted at Altoona, Pa., on the route from Lowell, Fla., to Pittsburgh, Pa.

The defendant's tariffs provided that shipments might be diverted on or previous to arrival of cars at Potomac Yard without further charge. The watermelons in question, billed originally to Pittsburgh, were diverted at Potomac Yard to Altoona, but, evidently through an error, a reconsignment charge of \$5 was exacted in addition to a charge of \$54.15 from Altoona to Pittsburgh. Altoona was a point intermediate to Pittsburgh.

Held, (Prouty, C.), that the extra charge was unwarranted and not in accordance with the published tariffs, and reparation should be awarded to the amount of \$59.15.

1334.—Davies v. Illinois Central R. Co. 19 I. C. C. Rep. 3. (June 10, 1910.)

Complaint of discrimination in charges for unloading consolidated carloads of vegetables at St. Rose, La.

The hearing developed that the circumstances in connection with the shipment were unusual and not previously correctly understood either by complainant or defendant.

Held, (Clark, C.), that no order appeared necessary.

1335.—Southern California Sugar Co. v. San Pedro, L. A. & S. L. R. Co. et al. 19 I. C. C. Rep. 6. (June 10, 1910.)

Petition for establishment of through route and joint rate on sugar from New Delhi, Cal., to Missouri River points via the line of the Pacific Electric Ry. Co., and transcontinental carriers through Los Angeles.

Complainant had located on the track of the Pacific Electric Ry. Co. and had a spur track to its factory. The Southern Pacific Co. had offered to construct a siding on which cars should be placed for loading three-quarters of a mile from the sugar factory, and this company was party to a joint through route and rate with eastern roads to the points of destination in question. The transcontinental lines refused to join in a through route with the Pacific Electric Ry. Co.

Held, (Lane, C.), (a) that the power of the Commission to establish through routes cannot be invoked unless it appears that the transportation point at which the complainant is located is not reasonably served by an existing through route;

(b) that in view of the through route via the Southern Pacific Company from a siding three-quarters of a mile away, the Commission had no power to order another through route via the Pacific Electric Ry. Co.

1336.—Cady Lumber Co. v. Missouri Pacific Ry. Co. et al. 19 I. C. C. Rep. 12. (June 3, 1910.)

Complaint of unreasonable rate on lumber from Le Compt and Cady Switch, La., to Omaha, Neb., and various other points, via Alexandria, La.

The shipments were made between April 18th, 1904, and September 23rd, 1906. Prior to May 9th, 1906, the defendants' tariffs provided for no reconsignment privilege at Alexandria, La., where the lumber in question was dressed. After that date, the tariffs provided a reconsignment privilege. All of the shipments in question were made to Alexandria at the local 5c. rate, and from Alexandria to destination were charged a 23c. rate. Under the reconsignment rates, the 5c. local rate would have been refunded on surrender of the local expense bills.

Held, (Clements, C.), (a) that as to shipments subsequent to May 9th, reparation should be awarded to the amount of 5c. per 100 lbs.

(b) that since the Commission would not sanction the application retroactively of a reconsignment privilege, even though it had long been the custom of the carrier to permit reconsignment without tariff authority, reparation would not be awarded on shipments made prior to May 9th, 1906.

Order accordingly.

1337.—Lull Carriage Co. v. Chicago, K. & S. Ry. Co. et al. 19 I. C. C. Rep. 15. (June 3, 1910.)

Complaint of unreasonable rate on wooden buggy bodies from Moline, Ill., to Kalamazoo, Mich., and demand for reparation.

The rate charged was the joint through class rate of 43c., minimum 18,000 lbs. There was in effect a combination rate on Chicago of 10c. at a 20,000 minimum, plus 22c. at an 18,000 lb. minimum. Defendants contended that the presumption of unreasonableness arising from the through rate exceeding the combined locals did not apply when one of the locals provided a different minimum from the other. It appeared, however, that the difference between the charge at the through rate and that at the combined locals in case of the shipments in question was \$17.80.

Held, (Clements, C.), that the presumption applied in the present case and complainant was entitled to reparation accordingly.

1338.—Baer Bros. Mercantile Co. v. Missouri Pacific Ry. Co. et al. 19 I. C. C. Rep. 18. (June 3, 1910.)

Complaint of unreasonable rate on beer from St. Louis, Mo., to Leadville, Colo., and demand for reparation.

The case was similar to Baer Bros. Mercantile Co. v. Missouri Pacific Ry. Co. (1081).

Held, (Clements, C.), (following the above case), that reparation should be awarded in accordance with the rate therein found to be reasonable.

1339.—Sunnyside Coal Mining Co. et al. v. Denver & R. G. R. Co. et al. 19 I. C. C. Rep. 20. (June 3, 1910.)

Claim for reparation for unreasonable charge on coal from the

Walsenburg District in Colorado to points on the line of the Union Pacific in Kansas.

Complainants had been parties in the case of Cedar Hill Coal & Coke Co. v. Colorado & Southern Ry. Co., (965), in which reparation had been demanded in substantially the same terms as this case and denied by the Commission. None of the complainants had paid the freight rates on which they sought reparation, it being their contention, that, as a matter of law, either the consignor or consignee could secure reparation on claim to the Commission without regard to which of them paid the freight charges.

Held, (Clements, C.), (a) that the Commission found nothing to lead it to depart from its decision in the Cedar Hill case;

(b) that following the decision in Nicola Co. v. Louisville & Nashville Ry. Co. (685) only the party paying the excessive charge is the one entitled to an award of reparation on finding that the rate charged is unreasonable, and therefore unlawful.

1340.—Waco Freight Bureau et al. v. Houston & T. C. R. Co. et al.
19 I. C. C. Rep. 22. (June 10, 1910.)

Complaint of unreasonable rate on bananas from New Orleans to Texas common points and demand for reparation.

Complainants contended,—1st, that a tariff rate of 42c. applicable on import traffic from New Orleans to Texas points applied to the banana traffic, and 2d, that the existing rate of 72c., applied to bananas by the carriers, was unreasonable.

Held, (Cockrell, C.), (a) that the cases of Payne v. Morgan's Louisiana & Texas R. & S. S. Co., (776), and Topeka Banana Dealers' Assn. v. St. Louis & S. F. Ry. Co., (653), involved a question precisely similar to the present;

(b) that although in cases before the Commission involving rates the pleas of *res adjudicata* and *stare decisis* as used at common law had no standing as affecting shipments moving subsequent to the decision of the Commission, yet since the shipments on which reparation was here asked moved prior to the decision of the Payne case and were identical to those in that case, involving the same tariffs, the construction of such tariffs there propounded would be adhered to by the Commission;

(c) that the 42c. import rate did not apply to the traffic in question;

(d) that the present 72c. rate did not appear to be unreasonable.
Complaint dismissed.

1341.—Newding v. Missouri, K. & T. Ry. Co. et al. 19 I. C. C. Rep. 29. (June 3, 1910.)

Complaint of unreasonable rate on second-hand beer bottles from St. Louis, Mo., to San Antonio, Tex., and demand for reparation.

The rate in question was 62c. At that time there was a rate in effect on junk bottles of 33c. and complainant had been informed by

defendants' agent that this rate would be applied to the shipments in question. He, therefore, quoted a price to his customer based on this rate.

Held, (Prouty, C.), that although the quotation of an erroneous rate by the agent was immaterial, the rate in question was unreasonable to the amount that it exceeded 33c., and reparation should be awarded accordingly.

1342.—Mosson Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 30.
(June 10, 1910.)

Complaint of unreasonable lighterage rules as applied to complainant in the Wallabout Basin of New York Harbor, and discrimination in favor of complainant's competitors.

Complainant was a lumber merchant in Brooklyn. The defendant's rules provided for free lighterage in the Harbor, but stipulated that when a lighter arrived at destination the shipper must provide a berth at one of the piers, and unless he did so after a certain free time, demurrage charges were assessed against him. There were only a certain number of free berths within the public lighterage limits and it was often necessary, when piers were crowded, for the lighters to wait a considerable time. Complainant asked that it be allowed to designate piers in the alternative. This would force the carrier to furnish tugs to shift lighters from pier to pier. To do away with the rule in question would enable consignees desiring to store shipments to designate congested piers and thereby obtain use of the carrier's equipment.

Held, (Clark, C.), that in view of the facts brought forth in the testimony it did not appear that the rules in question were unreasonable or discriminatory.

1343.—National Hay Assn. v. Michigan Central R. Co. et al. 19
I. C. C. Rep. 34. (June 10, 1910.)

Complaint of unreasonable rate and classification on hay in Official Classification Territory.

The action complained of was the raising of hay from 6th to 5th class on January 1st, 1900. This action had been the subject of the complaint in *National Hay Assn. v. Lake Shore & Michigan Southern Ry. Co.* (309-A), in which the Commission had issued an order requiring the carriers to place hay in the 6th class again. This order had been held invalid by the courts on the ground that the Commission had no power to fix maximum rates (309-B and 309-C). Defendants maintained that the principle of *res adjudicata* was applicable, and also that the Commission had no power over classification matters. It appeared that the production of hay had not decreased since the change of the classification and that Canadian hay had not gained ground on this account. The amount of acreage devoted to hay was now as great as at any time. Hay could not be loaded at all heavily and did not produce much revenue per car in comparison with grains,

Held, (Cockrell, C.), (a) that the plea of former adjudication was not good as far as the present rates were concerned;

(b) that irrespective of the power of the Commission over a pure classification matter, the present case involved rates as well as classification;

(c) that freight rates cannot be made solely with reference to the value of the article transported or to the loss and damage arising from transportation, since the occupancy of the carrier's equipment must also enter into the question;

(d) that in view of the testing of the 5th class rates for the past ten years, the Commission would not disturb the present rates.

Complaint dismissed.

Commissioners Prouty and Lane dissented.

1344.—Industrial Lumber Co. v. St. Louis, W. & G. Ry. Co. et al.
19 I. C. C. Rep. 50. (June 10, 1910.)

Complaint of unreasonable rate on yellow pine lumber from Oakdale, La., to Port Arthur, Tex.

The rate in question was 9c., having recently been advanced from 7c. The main subject of the complaint was that the 9c. rate gave an undue advantage to complainant's competitors on the western edge of the forest in which complainant operated. Defendants contended that the rate in question was a competitive one, forced by the action of the carriers running to New Orleans, who threatened to reduce the New Orleans rates unless the defendants raised the Port Arthur rate to 9c. It also appeared that there were certain tap line allowances involved, which, under the decisions in the *Star Grain* and *Chicago Lumber Co.* cases (703-B and 942) were perhaps illegal.

Held, (Clark, C.), (a) that the 9c. rate could not be held to be unreasonable *per se*;

(b) that the complaint should be dismissed without prejudice, with leave to complainant to bring up again the question of the tap line allowances if these operated to its prejudice.

Order accordingly.

1345.—Northern Lumber Mfg. Co. v. Texas & P. Ry. Co. et al.
19 I. C. C. Rep. 54. (June 10, 1910.)

Complaint of improper demurrage and storage charges on steel rails, old logging cars and steam kidders, from Onalaska, Ark., to Batchellor, La., and demand for reparation.

On examination of the tariff it appeared that no rate had been filed applicable to the commodities in question. The demurrage and storage charges had accrued as a result of demand by the carriers for a rate higher than that found by the Commission to be reasonable.

Held, (Clements, C.), that demurrage and storage charges collected as a result of carriers demanding rates in excess of those in their legally filed tariffs must be refunded and this principle applies to

cases in which charges are demanded on shipments as to which no rates are published.

Order for reparation accordingly.

1346.—Chappelle v. Louisville & N. R. Co. et al. 19 I. C. C. Rep. 56. (June 2, 1910.)

Complaint of unreasonable minimum rates on private passenger and baggage cars.

Complainant was the manager of a theatrical company of negroes and used for a large part of his performances a tent, which, with the paraphernalia accompanying it, was carried in a baggage car. This car had a stove in it for cooking the meals of the troupe. Complainant also had a Pullman sleeper. Complainant contended that defendants refused to haul these cars on its passenger trains, but defendants justified this on the ground that the cars were not in safe condition. The tariff provided for a \$25 rate on combination cars and for a \$10 rate on baggage cars, and defendants contended that the \$25 rate was applicable because of the existence of the stove in the baggage car. Defendants also claimed the right to make an extra charge for carrying the tents, poles and seats in the baggage car.

Held, (Lane, C.), (a) that in spite of the existence of the stove, the baggage car should be hauled at the \$10 minimum;

(b) that the tent, poles, etc., should be carried as ordinary baggage without extra charge;

(c) that the Commission "hesitates to reduce a rate unless clearly excessive;"

(d) that the rates in question did not appear to be unreasonable.

Order accordingly.

1347.—Pennsylvania Smelting Co. v. Northern Pacific Ry. Co. et al. 19 I. C. C. Rep. 60. (June 10, 1910.)

Complaint of unreasonable rate on lead ore and concentrates from the Coeur d'Alene district in the state of Idaho to Carnegie, Pa., and demand for reparation.

The rate in question was \$12 per ton, this rate applying also to Atlantic Coast points more than 400 miles more distant than Carnegie, Carnegie being intermediate. From all other western points the rate was 60c. less to Carnegie than to New York.

Held, (Clements, C.), (in an opinion reviewing the charges and circumstances of shipment) that the rate in question was unreasonable to the amount that it exceeded \$11.40, and reparation should be awarded accordingly.

1348.—Felton Grain Co. v. Union Pacific R. Co. et al. 19 I. C. C. Rep. 63. (June 10, 1910.)

Complaint of unreasonable rate on hay from Henderson, Colo., to Breau Bridge, La., and demand for reparation.

The rate charged was a class rate of 67c., this being the result of a mistake in the tariff which omitted to specify a combination 45c. rate. Defendants agreed to the award of reparation.

Held, (Clements, C.), that an order should be made accordingly.

1349.—Ohio Foundry Co. v. Pittsburgh, C., C. & St. L. Ry. Co. et al. 19 I. C. C. Rep. 65. (June 11, 1910.)

Complaint of unreasonable rate and classification on fire places and grates, gas and coal, from Steubenville, O., to San Francisco, Cal., and demand for reparation.

Defendants' tariffs applicable to fire places and grates were rather ambiguous, providing rates on "iron fire places and grates for same n.o.s. made of wrought or cast iron," also "furnace grates" at \$1.35; and a rate of \$1.45 on gas grates. Complainant had described the shipment in question as "gas grates," but it claimed that they really were gas fire places and grates and iron fire places and grates, designed for burning coal. The shipments were rated at the \$1.45 rate.

Held, (Cockrell, C.), (a) that the declaration by the shipper in the invoices that the shipments were gas grates was not conclusive of what the shipments actually were;

(b) that the shipments in question came fairly within the tariff provision specifying a \$1.35 rate, and reparation should be awarded accordingly.

1350.—Prentiss & Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 68. (June 3, 1910.)

Complaint of unreasonable charge on molasses from Philadelphia, Pa., to Buffalo, N. Y., and demand for reparation.

The shipper's agent had noted on the bill of lading, in the blank after the printed word "route," the letters "D. L. & W. R. R." The D. L. & W. tariffs provided for unloading carload freight at Buffalo free of charge when this road had a line haul. The Pennsylvania Railroad, instead of delivering the freight to the D. L. & W. at Manunka Chunk, carried it over its own line to Buffalo and there turned it over to the D. L. & W., resulting in an unloading charge by the D. L. & W. which would not have been incurred had the D. L. & W. hauled the freight from Manunka Chunk.

Held, (Harlan, C.), (a) that the directions on the bill of lading were sufficient to make it the duty of the Pennsylvania Railroad to deliver the freight to the D. L. & W. at Manunka Chunk and so avoid the payment of the unloading charge;

(b) that reparation should be awarded accordingly.

1351.—Billings Chamber of Commerce v. Chicago, B. & Q. R. Co. 19 I. C. C. Rep. 71. (June 10, 1910.)

Complaint of unreasonable rates from Billings, Mont., to points in Wyoming, and demand for reparation.

In the opinion the distances and rates between Billings and the points in question are set out at length. It appeared that, at existing rates, business houses at Billings were not able to do business profitably in competition with jobbers at competitive points. The routes over which the traffic in question moved were branch lines, expensive to operate.

Held, (Clark, C.), (a) that although branch line rates might be somewhat higher than those on main lines, the fact that branch lines were feeders to the main lines and helped to swell the revenues of such lines must also be considered and the fact that the branch lines, taken by themselves, fail to show large earnings did not justify the charge of unreasonable rates on such lines;

(b) that the rates in question were unreasonable to the amount that they exceeded figures named and should be reduced accordingly without, however, award of reparation on past shipments.

Order accordingly.

1352.—*Millar v. New York C. & H. R. R. Co. et al.* 19 I. C. C. Rep. 78. (June 3, 1910.)

Complaint of unreasonable rate on cabbage from Lewiston, N. Y., to Houston, Tex., and demand for reparation.

The rate charged was a combination rate of 78½c. Previous to the shipment, a 49c. rate had been in effect, and this was soon re-established.

Held, (Clements, C.), that the facts amounted to an admission that the 49c. rate was a fair one under the circumstances, and reparation should be awarded accordingly.

1353.—*Southern Cotton Oil Co. v. Southern Ry. Co. et al.* 19 I. C. C. Rep. 79. (June 11, 1910.)

Complaint of unreasonable rate on cotton linters from Barnwell, S. C. to Pawtucket, R. I., and demand for reparation.

Defendants' tariffs provided for a lower rate under a released valuation. Defendants' agent knew that complainant wished to secure the lowest rate, but did not obtain his signature to the release of valuation so as to secure such low rate. The delivering carrier collected the high rate.

Held, (Clements, C.), that it was defendants' duty to secure complainant's signature to the released valuation clause and reparation should be awarded accordingly.

1354.—*In re Jurisdiction over Rail and Water Carriers Operating in Alaska.* 19 I. C. C. Rep. 81. (June 6, 1910.)

The question involved was as to whether or not the Act applied to traffic wholly within the territory of Alaska.

Held, (Harlan, C.), (a) that the laws of the United States recognized two kinds of territories, unorganized and organized territories,

the first of which were regulated directly by Congress and the second by local territorial self-government;

(b) that the Act to Regulate Commerce was applicable only to organized territories;

(c) that Alaska was an unorganized territory and therefore rates within Alaska were not subject to the jurisdiction of the Commission.

Commissioners Clements, Cockrell and Lane dissented.

1355.—Humboldt Steamship Co. v. White Pass & Yukon Route et al. 19 I. C. C. Rep. 105. (June 6, 1910.)

Petition for the establishment of through routes and joint rates from Seattle, Wash., to points in Alaska.

Held, (Knapp, Ch.), (following the decision in *In re Jurisdiction over Rail and Water Carriers in Alaska* (1354)) that without passing on the merits of the controversy, the Commission was without jurisdiction to make the order sought by the complainant.

Complaint dismissed.

1356.—Rutland and Rutland, Partners, Doing Business as The Canadian Valley Grain Co. v. Chicago, R. I. & P. Ry. Co. et al. 19 I. C. C. Rep. 108. (June 2, 1910.)

Demand for reparation by reason of defendants' failure to post a tariff at Calvin, Okla., showing the rate on snapped corn to De Queen, Ark.

Defendants' failure to post the tariff in question resulted in complainant's making a sale of corn on the basis of the 19c. rate, instead of the 23c. rate provided by the tariff in effect at the time.

Held, (Harlan, C.), that in accordance with the decision in *Kiel Woodenware Co. v. Chicago, Milwaukee & St. Paul Ry. Co.*, (1233), reparation should be awarded on the basis of 4c. per 100 lbs.

1357.—Quammen & Austad Lumber Co. v. Chicago, M. & St. P. Ry. Co. et al. 19 I. C. C. Rep. 110. (June 3, 1910.)

Complaint of unreasonable rate on sash and doors and compoboard from Minneapolis, Minn., to Lemmon, S. Dak., and demand for reparation.

Neither party appeared at the hearing.

Held, (Clements, C.), that while it was the duty of the Commission to look into the facts in any controversy presented to it, yet it was the duty of the complainant to aid the Commission in presenting evidence to substantiate its claim.

Complaint dismissed without prejudice.

1358.—Strauss v. American Express Co. et al. 19 I. C. C. Rep. 112. (June 3, 1910.)

Complaint of discrimination in refusal to gather and deliver ex-

press packages on Green Bay Avenue, Milwaukee, north of Hadley St. while extending that service to other sections of the city.

It appeared that the service to other points in Milwaukee accorded by the defendants was substantially similar to that asked for in the portion of the city where complainant desired delivery.

Held, (Clements, C.), that the present practice resulted in discrimination against complainant which should be discontinued.

Order accordingly.

1359.—Gamble-Robinson Commission Co. v. St. Louis & S. F. R. Co. et al. 19 I. C. C. Rep. 114. (June 3, 1910.)

Complaint of unreasonable rate on apples from Seymour, and Cedar Gap, Mo., to Minneapolis and St. Paul, Minn., and demand for reparation.

The rates in question had for many years been 34c. and 34½c., but in September, 1906, they were raised to 42c. and 41c. Shipments were made in October and November, 1906, and the complaint was not filed until May, 1910, but in February, 1907, a letter was received by the Commission setting forth the precise nature of the claim and attached to it expense bills showing the shipments and amounts paid, of all of which defendants were notified. Subsequently, the rates were again reduced. Five of the cars in question were bought by the complainant and five were handled by it on commission.

Held, (Knapp, Ch.), (a) that the informal complaint tolled the Statute;

(b) that the rates in question were unreasonable to the extent that they exceeded 34c. and 34½c.

(c) that the party required to pay an unlawful rate was the one to whom reparation should be awarded, and, therefore, reparation on the five consigned cars should be denied, but should be awarded on the others on proper proof.

1360.—Menefee Bros. v. Vicksburg, S. & P. Ry. Co. et al. 19 I. C. C. Rep. 117. (June 7, 1910.)

Complaint of unreasonable rate on shingles from Monroe, La., to Crowell, Tex., and demand for reparation.

The rate charged was 44c. while shortly after a 26¾c. commodity rate was established which defendants admitted was a reasonable one.

Held, (Clements, C.), that reparation should be awarded accordingly.

1361.—Saginaw & Manistee Lumber Co. et al. v. Atchison, T. & S. F. Ry. Co. 19 I. C. C. Rep. 119. (June 7, 1910.)

Complaint of unreasonable rates on lumber from Williams, Flagstaff and Cliffs, Ariz., to Phoenix, Ariz., and petition for the establishment of a through route and joint rate.

In an opinion discussing the circumstances and conditions sur-

rounding the traffic, the cost of production and sources of competition,

Held, (Prouty, C.), (a) that the rates in question were unreasonable to the extent that they exceeded figures named;

(b) that through routes and joint rates should be established as indicated.

Order accordingly.

1362.—Record Oil Refining Co. et al. v. Midland Valley R. Co. et al. 19 I. C. C. Rep. 132. (June 10, 1910.)

Complaint of unreasonable rate on oil from Muskogee, Okla., to New Orleans, La.

The rate in question was 17½c. The main contention of the complainants was that the rate was unreasonable to the amount that it exceeded 15c. by reason of a 15c. rate in effect from Muskogee to Baton Rouge, La., but the latter rate was a result of the building of a pipe line by the Standard Oil Co. from Muskogee to Baton Rouge.

Held, (Clements, C.), that the 17½c. rate did not appear to be unreasonable.

Complaint dismissed.

1363.—Bott Bros. Mfg. Co. v. Chicago, B. & Q. R. Co. et al. 19 I. C. C. Rep. 136. (June 10, 1910.)

Complaint of unreasonable rate on barrel staves and headings from Malden, Mo., and points in Arkansas, to Alexandria, Mo., and demand for through route and joint rate, and for reparation.

For fifteen years prior to September, 1908, a joint through rate of 17c. had been maintained between Harrisburg, Ark., and Alexandria, but this rate was then cancelled, leaving a 19c. combination rate in force. On a review of the facts,

Held, (Prouty, C.), (a) that the 19c. rate was unreasonable to the amount that it exceeded 17c.;

(b) that a through route and rate of 17c. should be established.

Order accordingly, allowing reparation.

1364.—Idaho Lime Co. v. Atchison, T. & S. F. Ry. Co. et al. 19 I. C. C. Rep. 139. (June 15, 1910.)

Demand for reparation by reason of misrouting cement from Medicine Lodge, Kans., to Spokane, Wash.

The facts disclosed in the evidence did not substantiate complainant's contention and the complaint was, therefore, dismissed.

1365.—Sawyer & Austin Lumber Co. v. St. Louis, I. M. & S. Ry. Co. et al. 19 I. C. C. Rep. 141. (June 2, 1910.)

Complaint of unreasonable rate and classification on box shooks from Pine Bluff, Ark., to Fort Worth, Tex.

The rate in question was 22¾c., while at the same time defendants maintained a lumber rate of 18¾c. Box shooks are by-products of

lumber manufacture and all over the country were generally rated the same as lumber.

Held, (Harlan, C.), that any rate in excess of the lumber rate was unreasonable and that rate should not be exceeded for the future.

1366.—*Craig Lumber Co. v. Virginian Ry. Co. et al.* 19 I. C. C. Rep. 144. (June 3, 1910.)

Complaint of unreasonable rate on lumber from Victoria, Va., to Alliance, Ohio, and demand for reparation.

It appearing that the rates in question were in accordance with the general structure of rates in the region.

Held, (Prouty, C.), that the complaint should be dismissed.

1367.—*Cameron & Co., Inc. v. Houston, E. & W. T. Ry. Co. et al.* 19 I. C. C. Rep. 146. (June 10, 1910.)

Demand for reparation for unreasonable charge and misrouting lumber from Davidville, Tex., to Santa Rita, N. Mex., and from Saron, Tex., to Altus, Okla.

Defendants admitted the justice of the complaint and reparation was awarded accordingly.

1367*.—*Arlington Heights Fruit Exchange et al. v. Southern Pacific Co. et al.* 19 I. C. C. Rep. 148. (June 11, 1910).

Complaint of unreasonable refrigeration charges and illegal pre-cooling rates on oranges and lemons from Southern California to eastern destinations.

In *Consolidated Forwarding Co. v. Southern Pacific Co.*, (371) the Commission had investigated the rates on citrus fruits and had found that the orange rate should not exceed \$1.10, but had then no power to order the reduction of the rate. The orange rate was then \$1.25 but had since been reduced to \$1.15. The lemon rate had been reduced at one time to \$1.00 but in December, 1909, had been raised to \$1.15. The duty on foreign lemons had recently been raised from \$1.00 to \$1.50. Since the former investigation, it appeared that the cost of producing oranges had been slightly increased, but that many economies had also been instituted resulting in advantages to growers and in a reduction of loss to the carrier. Circumstances surrounding the traffic are reviewed in the opinion. The lemon traffic to the east was in strong competition with lemons from Sicily and the \$1.00 rate had been put in force by the carriers to enable California shippers to meet this competition.

Held, (Prouty, C.), (a) that in view of the facts the orange rate of \$1.15 did not appear to be unreasonable;

(b) that the lemon rate, however, should not exceed \$1.

Order accordingly with provision for reparation with regard to any lemon shipments proved to have been made at the \$1.15 rate.

1368.—Commercial Club of Omaha v. Chicago & N. W. Ry. Co. et al. 19 I. C. C. Rep. 156. (June 11, 1910.)

Complaint of unreasonable rate on lumber from Omaha to points in Colorado, Kansas and Nebraska.

Complainant contended that the rates in question were unreasonable both in themselves and by comparison with other similar rates. Its desire was to bring about a rate adjustment enabling Omaha jobbers to operate on a parity with jobbers from the south. A number of the points in question were located on branch lines. On examination of the entire rate situation,

Held, (Clark, C.), (a) that points located on a branch line might well take higher rates for like distances than on main lines in well-developed territory, where the density of traffic is much greater;

(b) that the rates in question were unreasonable and should be reduced to figures specified in the table annexed.

Order accordingly.

1369.—Commercial Club, Traffic Bureau, of Salt Lake City, Utah v. Atchison, T. & S. F. Ry. Co. et al. 19 I. C. C. Rep. 218. (June 7, 1910.)

Complaint of unreasonable class rates in both directions between Chicago, the Mississippi River, and the Missouri River, upon the one hand, and Salt Lake City, upon the other; of westbound commodity rates from the above-named eastern points of origin to Salt Lake City; of eastbound rates on certain products of Utah to the Missouri River, the Mississippi River, and Chicago; of rates on deciduous and citrus fruits from points of production in California to Salt Lake City; of import rates upon certain commodities through Pacific coast ports to Salt Lake City; of passenger fares in both directions between Salt Lake City, Ogden and Provo, upon the one hand, and Denver, Omaha, Los Angeles, San Francisco and Portland upon the other.

Defendants contended that to allow the reductions asked would so impair their revenues as to deprive them of their property without due process of law. The Commission investigated and reviewed the financial status of the companies involved. It appeared that although operating expenses had largely increased, many economies had been introduced which, to a large extent, counteracted the additional expense. The Union Pacific road had a considerably shorter line and less operating cost than the Denver & Rio Grande, between the points in question.

Held, (Prouty, C.), (a) that in determining the reasonableness of a freight rate as between competing lines, the Commission would not look solely to the line which was strongest financially, but consider its weaker rivals as well, but the charges exacted by the weaker line should not, on the other hand, be the sole test of reasonableness;

(b) that class rates in both directions between Chicago, Miss-

issippi and Missouri River points and Utah points were unreasonable and should be reduced to figures stated;

(c) that the same was true with reference to certain commodity rates from Chicago, Mississippi River and Missouri River points to Utah, and as to east-bound rates on other commodities named;

(d) that the rate on deciduous and citrus fruits from California to Utah points was also unreasonable and should be reduced to figures stated;

(e) that import proportional rates on Asiatic business moving through Pacific coast ports should also be reduced as specified;

(f) that the passenger fares in question were also, to a certain extent, unreasonable, and should be reduced as indicated;

(g) that no order should be entered for the present, but the carriers should keep an accurate account during the summer months so as to show the effect of the proposed rates on the revenues, the new schedules to be ready for filing by November 1st.

Order accordingly.

1370.—Railroad Commission of Nevada v. Southern Pacific Co. et al. 19 I. C. C. Rep. 238. (June 6, 1910.)

Complaint of unreasonable rates from points in eastern territory to Nevada.

It appeared that Nevada was one of the most sparsely settled regions in the United States and also that the highest main line rates in the United States were those from the eastern points to Nevada stations. Intra-state Nevada business, however, during the past few years had grown considerably. Rates to Reno were made up for the most part of joint through rates to California points combined with locals back. The complainants contended that the rates to Nevada points should not exceed those to Pacific Coast terminals. The carriers, however, sought to justify the higher rates to the less distant point on the ground of water competition. It appeared that rail and water lines via the isthmus rendered five different transportation services, three by rail and two by water, involving six handlings of the freight and a total haul of 5,500 miles at from 60 per cent. to 75 per cent. of the rail rate to the coast. The Commission also went into the question of the divisions of rates between the various carriers.

Held, (Lane, C.), (a) that although the Commission did not see its way clear to compelling the carriers to reduce the rates to Nevada to the amount of the Pacific Coast rates, yet considerable reductions should be made, to figures stated in the opinion;

(b) that no order, however, should be made for the present, but the carriers should make a record of shipments during the summer months in order that the effect of the proposed changes on the revenues of the defendants might be accurately determined.

1371.—Maricopa County Commercial Club v. Santa Fe, Prescott & Phoenix Ry. Co. et al. 19 I. C. C. Rep. 257. (June 6, 1910.)

Complaint of unreasonable class rates to Phoenix, Ariz., from points between the Missouri River and the Pittsburgh-Buffalo line.

After extensive investigation of the question,

Held, (Lane, C.), (a) that the rates in question were unreasonable in so far as they exceeded figures named;

(b) that statistics similar to those ordered in the Reno case (1370) should be kept by the carriers during the summer months in order that the effect of the proposed order on the defendants' revenue might be accurately determined.

1372.—Traffic Bureau of the Merchants' Exchange v. Southern Pacific Co. 19 I. C. C. Rep. 259. (June 6, 1910.)

Complaint of unreasonable class rates from Sacramento, Cal., to points on the main line of the Southern Pacific between Reno, Nev., and Cecil Junction, Utah.

The line in question was exceptionally expensive to build and also to maintain and operate, by reason of heavy grades, sharp curves, snow sheds, etc. Defendant contended that they were doing the maximum business which could be done economically with the present equipment and that an increase in business would add to the expense per unit of operation, so that a reduction of rates and consequent increase of tonnage would not benefit them. After investigation and review of the rates and circumstances of traffic,

Held, (Lane, C.), (a) "We do not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is built and operated as a whole, and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths;"

(b) that the rates in question were unreasonable and should be reduced to figures specified.

Order accordingly.

1373.—Portland Chamber of Commerce et al. v. Oregon R. & N. Co. et al. 19 I. C. C. Rep. 265. (June 7, 1910.)

Complaint of unreasonable class rates from Seattle, Tacoma and Portland to points in Washington, Oregon, Idaho and Montana.

In connection with the proposed scheme in the Spokane case, the Northern Pacific and Great Northern had each proposed to reduce their class rates substantially 16 2-3 per cent. In the opinion, the Commission investigated the circumstances surrounding the traffic and also the revenues and financial condition of the various carriers.

Held, (Knapp, Ch.), (a) that the rates in question were unreasonable and should be reduced as indicated substantially 20 per cent.;

(b) that no final order should be entered for the present until the rates should be subjected to an actual test similar to that prescribed in the Reno case (1370).

1374.—St. Paul Board of Trade et al. v. Minneapolis, St. P. & S. Ste. M. Ry. Co. 19 I. C. C. Rep. 285. (June 10, 1910.)

Complaint of unreasonable rates on butter and eggs from St. Paul and Minneapolis, Minn., to Manistique, Mich., and preference of Paynesville and Alexandria.

Paynesville and Alexandria were on defendant's line about 100 miles west of Minneapolis, and were concentrating points for butter and eggs produced in the adjoining farming districts. From these points, defendants maintained two proportional rates to Manistique, one of 20c. and one of 40c., applicable on through shipments of butter and eggs to eastern destinations, the 20c. rate, however, being applicable only to shipments which had come previously from points on the rails of the defendant. The same rates applied from the Twin Cities to Manistique, but as a practical matter did not benefit St. Paul, since almost all the butter and eggs shipped from St. Paul had come from points not on defendant's rails, while from Paynesville and Alexandria most of the traffic had originated on defendant's line. Complainants contended that the proportional 20c. rate should be an open rate, and should be somewhat lower from St. Paul than from Paynesville and Alexandria. It appeared that the 20c. rate was sometimes applied to traffic which had come to the concentrating point under rates not published and filed with the Commission.

Held, (Harlan, C.), (a) that the Commission saw no reason why the defendant should not make a distinction in its rates between butter and eggs originating on its own line and that originating on the lines of other carriers;

(b) that the proportional rate, however, could lawfully be limited to traffic which had reached the concentrating points over the defendant's lines under rates published and filed with the Commission.

1375.—Reiter, Curtis & Hill v. New York, S. & W. R. Co. 19 I. C. C. Rep. 290. (June 2, 1910.)

Demand for reparation for exaction of unreasonable demurrage charges on construction appliances at Vails, N. J.

Complainant had finished construction near Mexico, Pa., and had another job at Vails, N. J., at a point some distance from the regular team track of defendant. This track was ample for the needs of the community but not sufficient to meet complainant's needs and complainant therefore had constructed a private track with two sidings. This, however, was not finished until thirty days after the shipments arrived and demurrage to the amount of \$1067 was assessed before the cars could be unloaded.

Held, (Harlan, C.), (a) that the carrier was not required to enlarge its facilities in order to meet the special needs of a special shipper under given conditions;

(b) that there was no undue delay by defendant in furnishing additional facilities in the present case.

Complaint dismissed.

1376.—**Willson Bros. Lumber Co. v. Norfolk Southern R. Co. et al.**
19 I. C. C. Rep. 293. (June 10, 1910.)

Demand for reparation for misrouting lumber from Hertford, N. C., to Ashland, Ohio.

The consignor gave no routing instructions. On receipt of the freight by the initial carrier, the agent did not know as to the cheapest available and reasonably direct route, but did not demand instructions from the consignor or make inquiry of connecting lines. He routed the freight by a route subjecting the complainant to a charge of \$68.30 higher than that over the cheapest possible route.

Held, (Harlan, C.), that reparation should be awarded in the above amount.

1377.—**Alabama Lumber & Export Co. v. Philadelphia, B. & W. R. Co. et al.** 19 I. C. C. Rep. 295. (June 10, 1910.)

Complaint of unreasonable rate on lumber from Bellamy, Ala., to Holly Beach, N. J., and demand for reparation.

The rate charged was the legal joint through rate of 34c. The Southern Railway agent advised complainant that the rate was 32c., and complainant had relied on this rate in quoting its price to its customer. It was also a question as to whether a small initial carrier in Alabama could properly have been made a party.

Held, (Harlan, C.), (a) that "the Commission has uniformly held that the naming by the carrier, either in the bill of lading or otherwise, of a rate less than that published and filed with the Commission, affords no proper basis for a departure from the legal rate or the payment of damages for a loss alleged to have been sustained as the result of the error;"

(b) that under the testimony, the rate in question did not appear to be *per se* or relatively unreasonable.

Complaint dismissed.

1378.—**Alpha Portland Cement Co. v. Delaware, L. & W. R. Co. et al.** 19 I. C. C. Rep. 297. (June 10, 1910.)

Complaint of unreasonable rate on cement from Martins Creek, Pa., to Brockton, Mass., and demand for reparation.

In the bill of lading, the complainant's shipping clerk erroneously noted directions to forward the cars over the lines of the Lehigh Valley, West Shore and Boston & Albany Railroads. In two places, however, he stated the through rate at \$2.25 per net ton. The latter was the proper joint rate over the line of the defendants in connection with the New York, New Haven & Hartford Railroad and other lines, but over the route specified a higher rate was in force. The shipment was routed over the lines specified, but not over the route having the \$2.25 rate.

Held, (Harlan, C.), (a) that where notations on a bill of lading showed both a rate and route, the rate not actually applying over the route named, it was the duty of the carrier to forward the freight

over the route on which the specified rate applies unless the rate via the specified route makes lower, in which event the specified routing must be followed;

(b) that reparation should be awarded on the basis of the \$2.25 rate.

1379.—Fisk & Sons v. Boston & Maine R. 19 I. C. C. Rep. 299. (June 3, 1910.)

Demand for reparation on account of shipment of anthracite coal from Pennsylvania fields to Holyoke, Mass.

The complaint asked for \$30,000 on account of delayed shipments, \$30,000 for unjust discrimination, and \$492.23 for loss of coal in transit; also additional sums for unreasonable charges, and \$353.93 for improper demurrage charges. A number of the shipments were made prior to June 6th, 1906, the complaint having been filed June 6th, 1908. On May 23d, 1907, a letter had been filed with the Commission setting forth rates generally from Pennsylvania coal fields to Holyoke and Springfield, but not as a claim in the present case. The demurrage in question accrued during a controversy as to defendant's right to cancel complainant's credit account. Violation of the long and short haul clause was also relied on as regards a higher charge to Holyoke than to Springfield, Mass. The real question involved was the reasonableness of the \$1.15 rate from Rotterdam Junction to Holyoke.

Held, (Clements, C.), (a) that although it was not necessary to file a formal petition in order to stop the statute, an informal letter or other communication to accomplish this result must contain all the elements of the claim, and the letter in question was not sufficient;

(b) that "regardless of a carrier's reasons for canceling a credit account, it is undoubted that it may demand its legal charges before delivering freight, and demurrage accruing during a controversy as to such payment can not be refunded on that ground alone, but it must be shown that the charges are unreasonable or unjustly discriminatory;"

(c) that the different circumstances and conditions at Springfield and Holyoke justified a greater rate for a less distance;

(d) that under the evidence, the \$1.15 rate from Rotterdam Junction to Holyoke could not be found to be unreasonable;

(e) that an overcharge admitted by the defendant should be refunded with interest, but otherwise the relief asked for should be denied.

1383.—Hillsdale Coal & Coke Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 356. (March 7, 1910).

Complaint of unreasonable regulations governing distribution of coal cars and demand for reparation on account of past discrimination against complainant in favor of his competitors.

The defendant's method of distributing cars was, in brief, as follows: The capacity of the mines was based on the combined physical and commercial capacity. To the physical capacity of the mine was added its commercial capacity for one year and the sum divided by two. The commercial capacity was based on the entire volume of shipments throughout the preceding twelve months, the ratings being revised quarterly or at any date at the request of a mine owner. As regards company and foreign fuel cars and individual cars, in distributing the equipment, company, individual, and foreign fuel cars were deducted from the rated capacity of the mine receiving them, and the remainder was regarded as the rated capacity in the distribution of system cars. This was the method of distribution involved in the case of Logan Coal Co. v. Pennsylvania R. Co. (511) and resulted in a certain advantage to the owner of individual cars. Complainant asked the sum of \$127,855.65 damages on account of denial to itself of its proper pro-rata of cars and the allowance to its competitors of more than their proper share. Complainant asked that the mines be rated solely on the basis of physical capacity.

Held, (Harlan, C.), (a) that foreign fuel and individual cars were properly assigned only to the consignee or owner thereof even though their number might exceed the ratable proportion to which such consignee or owner was entitled;

(b) that such cars must be counted as part of the share of the operator receiving them and not merely be deducted from the mine rating in order to secure a new figure for distribution of system cars;

(c) that the principal of *stare decisis* had little application in proceedings before the Commission involving questions of this nature;

(d) that it was unreasonable to rate the mines solely on physical capacity and the present system of counting physical and commercial capacity each one half was reasonable;

(e) that the fact that complainant may have received all the cars to which it was properly entitled did not preclude it from demanding that its competitors be not given more than their proper share of cars;

(f) that the charter of the defendant company did not authorize it to haul the individual cars of all shippers under car distribution regulations producing undue discriminations among coal operators;

(g) that in accordance with the decision in Joynes v. Pennsylvania R. Co. (1112), the Commission must, for the present, decline to award damages on account of the unjust discrimination found to have existed in this case, but in view of the difficulty suggested by the decision in Morrisdale Coal Co. v. Pennsylvania R. Co. (1152) the present case would be held open pending the decision of the appeal to the Circuit Court of Appeals;

(h) (semble) that if the Circuit Court of Appeals denied damages in the Morrisdale Coal case, the Commission might entertain proceed-

ings leading to the award of damages in the present instance in order to avoid injustice.

Order accordingly.

Prouty, C., dissented, holding that, in his opinion, the Commission should have awarded damages on account of the imposition of the unjust regulation affecting rates involved in this case.

Lane, C., and Clements, C., dissented on the ground that the physical capacity of the mine alone was the proper basis for car distribution in this region.

APPENDIX A.

ANNOTATIONS TO COMMISSION CITATIONS.

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3	224	3	70
4	626	3	621
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3	224	6	29
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6	20	6	373
8	112	6	476
8	252	8	521
11	65	—52—	
—30—		2	78
3	599	2	83
—31—		2	83
1	173	2	84
1	182	2	151
1	628	2	294
2	12	2	587
2	23	3	559
2	255	4	86
2	263	4	151
3	25	4	187
3	63	4	208
3	78	4	261
4	18	5	399
4	21	8	288
4	21	13	361
4	27	—73—	
4	243	3	557
4	261	3	560
5	240	9	33
5	249	—90—	
5	250	2	312
5	251	2	373
5	371	3	582
5	383	4	145
		4	153
		4	661

5 199	7 103	8 259	8 114	—577—	11 549
5 212	7 164	—604—	8 253	17 104	—87—
5 429	7 165	5 628	10 63	—592—	9 446
5 431	7 166	6 236	—221—	4 17	—104—
5 433	7 167	6 586	4 520	4 677	7 235
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—122—	5 80	3 639	4 520	4 726	9 50
2 130	—304—	7 164	—224—	4 726	—116—
4 316	6 15	7 474	4 520	5 25	5 111
6 555	—315—	16 582	—225—	5 369	—131—
9 85	2 395	17 173	4 190	5 604	4 316
16 346	2 570	—638—	5 111	6 48	5 201
—131—	2 586	18 78	7 253	—613—	5 427
5 3	2 588	—645—	—252—	—649—	5 431
5 39	3 263	3 562	4 527	7 335	12 410
5 111	3 568	—649—	5 111	—658—	—158—
5 370	4 207	3 470	6 23	7 53	4 618
5 629	17 132	6 117	6 236	12 418	5 520
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4 520	9 226	4 29	8 269	8 626	—228—
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4 29	4 29	13 320	14 71	9 240	5 207
6 481	—162—	—162—	—450—	13 65	5 208
13 320	3 17	3 17	7 247	—32—	—251—
—162—	4 716	4 716	7 335	9 83	4 23
3 17	7 537	7 537	—465—	—41—	—265—
4 716	—231—	—231—	12 96	4 742	4 718
7 537	3 259	3 259	—473—	—48—	4 726
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3 259	4 83	4 83	5 646	5 40	5 458
3 632	4 84	4 84	5 652	5 111	7 555
4 83	4 211	4 211	5 655	8 178	—296—
4 84	5 400	5 400	6 109	9 306	7 38
4 211	5 608	5 608	9 356	—79—	—417—
5 400	6 678	6 678	—534—	5 630	8 308
5 608	7 63	7 63	4 21	6 236	8 309
6 678	7 475	7 475	4 243	6 238	8 310
7 63	8 358	8 358	4 261	6 484	10 36
7 475	9 599	9 599	5 111	9 31	10 37
8 358	—272—	—272—	8 259	9 241	10 38
9 599	2 632	2 632	16 582	9 247	10 40
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2 632	—584—	—137—			
7 102	3 462	6 18			

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14	72	6	7	2	235	6	616				
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9	484	7	163	8	113	—514—	10	225	10	98	
		7	373	11	19	7	555	17	127	12	169
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		5	630	5	465	8	7	18	63	7	278
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5	125			14	176	8	16	—121—		8	406
5	111	5	119			8	19	6	528	8	628
5	370	5	136	—234—				6	546	—520—	
6	67	5	458	5	511	—546—		6	543	7	555
6	321	5	541	6	238	6	263	12	433	12	433
6	554	5	22	6	245	7	373	13	635		
7	38	6	554	6	675	10	112			—543—	
8	641	7	604	8	626	—571—		—131—		19	73
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5	111	9	482	—264—		5	245	6	546	—548—	
5	161	14	493	5	627	6	480	6	543	9	83
5	604			6	245	6	675	6	622		
8	18	—44—		6	480	7	164	7	165	—568—	
8	19	7	329	6	557	7	158	—148—		7	278
19	75	7	342	6	675	7	510	9	85	10	462
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—611—		9	236	18	505	—596—				—632—	
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13	248			—324—				6	286	7	237
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5	369	17	371	5	630	—634—		7	330	8	485
6	48			6	6	15	338	—295—			
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5	116	5	126	6	233	11	410	17	427	7	237
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9	242	6	554	7	64	VOL. VI.		—335—		7	385
		7	554	7	237	—1—		7	554	—38—	
—694—		8	287	7	373	6	48	19	143	15	20
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—733—		5	449	9	70	9	344	—361—		9	204
9	446	5	524	12	169	12	169	6	355	9	237
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5	248	5	119	—415—							
5	370			6	316						

-61-		-431-		-110-		19	308	19	308	13	678
7	374	17	531	8	252					16	133
				11	65	-443-		-182-		-606-	
-69-		-458-		-121-		12	241	10	615	9	354
9	33	8	46	9	316	13	299	14	483	13	66
11	462		360	10	214	17	215	17	104	-620-	
11	474	-481-		11	612	17	216	-207-		9	632
12	499	8	267	-142-		18	63	9	212	14	442
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16	412	8	551	9	180	8	627	12	497	10	224
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17	249	10	86	15	339	9	247	-264-		11	417
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10	660	12	499	10	107	19	59	11	272	11	576
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APPENDIX B.

TABLE OF COMMODITY RATES PASSED UPON IN RECENT CASES.

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- Acid, Sulphuric.** Buffalo, N. Y. to Tulsa, Okla. Contact Process Co. v New York, C. & St. L. R. Co. et al. 17 I. C. C. Rep. 184, (1069).
Howe, Ill. to Aetna, Ind. Mineral Point Zinc Co. v. Wabash R. Co. et al. 16 I. C. C. Rep. 440, (983).
- Acid Phosphate.** Baltimore, Md. and Buffalo, N. Y., the Tennessee phosphate fields and Washington Court House, O., to Prairie Switch, Ind. Bash Fertilizer Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 522, (1303).
- Agricultural Implements.** Chicago, Ill. to Black Earth and Mauston, Wis. International Harvester Co. of America v. Chicago, M. & St. P. R. Co. 18 I. C. C. Rep. 222, (1227).
Galva, Canton and Springfield, Ill., Peoria, Ill., Missouri River points. Avery Mfg. Co. et al. v. Atchison, T. & S. F. R. Co. et al. 16 I. C. C. Rep. 20, (874).
Minneapolis, Minn. to New York, N. Y. Minneapolis Threshing Machine Co. v. Chicago, St. P., M. & O. R. Co. et al. 16 I. C. C. Rep. 193, (916).
Wallingford, Vt. to Denver, Col. Tritch Hardware Co. v. Rutland R. Co. et al. 17 I. C. C. Rep. 542, (1150).
Omaha, Neb. to Denver, Colo. Tritch Hardware Co. v. Chicago, R. I. & P. R. Co. 18 I. C. C. Rep. 71, (1180).
Horicon Junction, Wis. to points in Minnesota and North Dakota. Van Brunt Mfg. Co. v. Chicago, M. & St. P. R. Co. et al. 17 I. C. C. Rep. 195, (1073).
- Agricultural Lime.** Englishtown, N. J. to Frederick Road, Md. Oker-son v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 127, (1196).
- Agricultural Machinery.** Bancroft, Tex. to Crowley, La. Advance Thresher Co. v. Orange & Northwestern R. Co. et al. 15 I. C. C. Rep. 599, (856).
- Alfalfa Hay.** Deming, N. M. to Bisbee, Ariz., El Paso, Tex. to Douglas and Bisbee, Ariz. Darbyshire & Evans v. El Paso & S. W. R. Co. 16 I. C. C. Rep. 435, (981).
- Alum.** Chicago Heights, Ill. to Lebanon, Oreg. Lebanon Paper Co. v. Elgin, J. & E. R. Co. et al. 18 I. C. C. Rep. 591, (1324).
- Ammunition, Black Powder.** Montchanin, Del., through Chadd's Ford Junction to points on the line of the Pennsylvania Railroad in Pennsylvania and Ohio. Du Pont De Nemours Powder Co. v. Pennsylvania R. Co. et al. 17 I. C. C. Rep. 544, (1151).
General. Chicago to Green Bay, Shullsburg and Platteville, Wis. Aetna Powder Co. v. Chicago, M. & St. P. R. Co. 17 I. C. C. Rep. 165, (1062).

- Kings Mills, O. to Muncie, Ind. *Goddard Co. v. Cleveland, C., C. & St. L. R. Co. et al.* 16 I. C. C. Rep. 298, (935).
- Norfolk, Va. to Annapolis, Md. *United States v. New York, P. & N. R. Co. et al.* 15 I. C. C. Rep. 233, (789).
- Animals, Small Live.** Vineland, N. J. to various points in the U. S. *Davis v. West Jersey Exp. Co. et al.* 16 I. C. C. Rep. 214, (921).
- Anthracite Coal.** Alden, Pa. to Walbrook and Hillen, Baltimore, Md. *Enterprise Fuel Co. v. Pennsylvania R. Co. et al.* 16 I. C. C. Rep. 219, (923).
- Pennsylvania fields to Holyoke, Mass. *Fisk & Sons v. Boston & Maine R.* 19 I. C. C. Rep. 299, (1379).
- Chicago, Ill. to Akron, Colo. *Laning-Harris Coal & Grain Co. v. Chicago, B. & Q. R. Co.* 18 I. C. C. Rep. 11, (1165).
- Duluth, Minn. and Superior Wis. to St. Paul and Minneapolis, Minn. *Manahan v. Northern Pacific R. Co. et al.* 17 I. C. C. Rep. 95, (1047).
- Apples.** Reno, Nev. to Alturas, Cal. *Bunch & Tussey v. Nevada-California-Oregon R.* 17 I. C. C. Rep. 506, (1143).
- Seymour and Cedar Gap, Mo. to Minneapolis and St. Paul, Minn. *Gamble-Robinson Commission Co. v. St. Louis & S. F. R. Co. et al.* 19 I. C. C. Rep. 114, (1359).
- Ozark Fruit Region in Arkansas and Missouri to eastern, south-eastern and southern points. *Ozark Fruit Growers' Assn. v. St. Louis & S. F. R. Co. et al.* 16 I. C. C. Rep. 134, (901).
- Mount Ross and Elizaville, N. Y. to Birmingham, Ala. *Pankey & Holmes v. Central New England R. Co. et al.* 18 I. C. C. Rep. 578, (1320).
- Washington points to points in North Dakota. *Stacy Mercantile Co. v. Minneapolis, St. M. & S. Ste. M. R. Co. et al.* 18 I. C. C. Rep. 550, (1312).
- Ashes, Hard-Wood.** Bay City, Mich. to Norfolk, Va. *Munroe & Sons v. Michigan Central R. Co. et al.* 17 I. C. C. Rep. 27, (1037).
- Asparagus.** Charleston, S. C. to northern points. *Asparagus Growers' Assn. of Charleston County, S. C. v. Atlantic C. L. R. Co. et al.* 17 I. C. C. Rep. 423, (1129).
- Automobile, Unrated.** Beatrice, Neb. to Kenosha, Wis. *Whitecomb v. Chicago & N. W. R. Co. et al.* 15 I. C. C. Rep. 27, (737).
- Automobiles.** Hagerstown, Md. to Marinette, Wis. *Pope Mfg. Co. v. Baltimore & O. R. Co. et al.* 17 I. C. C. Rep. 400, (1122).
- Axles, Car.** Marshall, Tex. to Holdup, La. *Crowell & Spencer Lumber Co. v. Texas & P. R. Co. et al.* 17 I. C. C. Rep. 333, (1108).
- Iron Wagon. Wilkes-Barre, Pa. to Carthage, N. C. *Tyson & Jones Buggy Co. v. Aberdeen & Asheboro R. Co. et al.* 17 I. C. C. Rep. 330, (1107).
- General.* Racine, Wis. to Prescott, Ariz. *Racine-Sattley Co. v. Chicago, M. & St. P. R. Co. et al.* 18 I. C. C. Rep. 142, (1200).

B

- Bags, Burlap.** New York to Chicago. *Kent Co. et al. v. New York C. & H. R. R. Co. et al.*, 15 I. C. C. Rep. 439, (824).
- Empty Wall-Plaster.* Acme Cement Plaster Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 557, (1315).

- Ball Cartridges.** Norfolk, Va. to Annapolis, Md. United States v. New York, P. & N. R. Co. et al. 15 I. C. C. Rep. 233, (789).
- Bananas.** New Orleans, La. and Mobile, Ala. to points in Iowa. Lagomarcino-Grupe Co. et al. v. Illinois C. R. Co. et al. 16 I. C. C. Rep. 151, (907).
New Orleans, La. to El Paso, Tex. Payne et al. v. Morgan's L. & T. R. & S. S. Co. et al. 15 I. C. C. Rep. 185, (776).
New Orleans to Texas common points. Waco Freight Bureau et al. v. Houston & T. C. R. Co. et al. 19 I. C. C. Rep. 22, (1340).
- Barbed Wire.** El Paso, Tex. to Las Cruces, N. Mex. Bascom Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 354, (1110).
- Bark, Tan.** Trenary, Mich. to Milwaukee, Wis. Trostel & Sons v. Minneapolis, St. P. & S. Ste. M. R. Co. et al. 16 I. C. C. Rep. 348, (949).
- Barley.** Porta Costa, Cal. to Milwaukee, Wis. Horst Co. v. Southern P. Co. et al. 17 I. C. C. Rep. 576, (1156).
- Barrel Headings and Staves.** Malden, Mo. and points in Arkansas to Alexandria, Mo. Bott Bros. Mfg. Co. v. Chicago, B. & Q. R. Co. et al. 19 I. C. C. Rep. 136, (1363).
- Barrels, Empty Oil.** Points in New Mexico to El Paso, Tex. Great Western Oil Co. v. Atchison, T. & S. F. R. Co. 16 I. C. C. Rep. 505, (1004).
- Bars, Iron.** East Chicago, Ind. to Moline, Ill. Bowman-Kranz Lumber Co. et al. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 277, (800).
- Bar Steel.** Johnstown, Pa. to Winona, Minn. Winona Carriage Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 334, (1258).
- Baskets, Bushel.** Traverse City, Mich. to Horatio, Ark. Wells-Higman Co. v. St. Louis, I. M. & S. R. Co. et al. 18 I. C. C. Rep. 175, (1210).
General. Traverse City, Mich. to Montrose, Ia. Wells-Higman Co. v. Grand Rapids & Indiana R. Co. et al. 16 I. C. C. Rep. 339, (947).
- Bath Tubs, Steel.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 71, (1043).
- Beans, Dried.** Grand Rapids, Mich. to Newport, Ark. Stevens Grocer Co. v. Grand Rapids & I. Ry. Co. et al. 18 I. C. C. Rep. 147, (1202).
General. Lansing, Mich. to Cedar Rapids, Ia. Isbell-Brown Co. v. Michigan Central R. Co. et al. 15 I. C. C. Rep. 616, (863).
- Bedroom Furniture.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Beds, Iron, Brass and Folding.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Beer.** Pueblo, Col. to Leadville, Col. Baer Bros. Mercantile Co. v. Missouri P. R. Co. et al. 17 I. C. C. Rep. 225, (1081).
St. Louis, Mo. to Leadville, Colo. Baer Bros. Mercantile Co. v. Missouri Pacific R. Co. et al. 19 I. C. C. Rep. 18, (1338).
La Crosse, Wis. to Glencoe, Minn. Heileman Brewing Co. v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 396, (967).
Points on and east of the Mississippi River to San Francisco. Lie-

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- bold, etc., Liebold & Co. et al. v. Delaware, L. & W. R. Co. et al. 17 I. C. C. Rep. 503, (1142).
- St. Louis, Mo. to Leadville, Col. Nollenberger v. Missouri Pacific R. Co. et al. 15 I. C. C. Rep. 595, (855).
- Olympia, Wash. to points in California. Olympia Brewing Co. et al. v. Northern P. R. Co. et al. 17 I. C. C. Rep. 178, (1067).
- Milwaukee, Wis. to Roswell, New Mexico. Pilant v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 178, (774).
- Beer Bottles**, Second-Hand. St. Louis, Mo. to San Antonio, Tex. Newding v. Missouri, K. & T. R. Co. et al. 19 I. C. C. Rep. 29, (1341).
- Beer Kegs**, Empty. Frontenac, Kas. to Chicago, Ill. Schoenhofen Brewing Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 329, (1106).
- Beer Packages**, Empty. Omaha, Neb. to Milwaukee, Wis. Pabst Brewing Co. et al. v. Chicago, M. & St. P. R. Co. et al. 17 I. C. C. Rep. 359, (1111).
- Beet Sugar**. Las Animas, Col. to Romero, Tex. American Beet Sugar Co. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 288, (930).
- Belting**, Link, East Moline, Ill. to New Orleans, La. Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 500, (1296).
- Big Vein Coal**. George's Creek, Md. to tidewater, and more distant competitive points. American Coal Co. of Allegheny Co. et al. v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 149, (1057-A); Philadelphia & Reading R. Co. et al. v. Interstate Commerce Commission, 174 Fed. 687, (1057-B).
- Bituminous Coal**. Monongah Division of Baltimore & O. R. Co. Baltimore & O. R. Co. v. United States ex rel. Piteairn Coal Co. 215 U. S. 481, (495-C).
- Chattanooga, Tenn., Bristol, Tenn. from Middlesboro, Ky. Bristol Board of Mayor and Aldermen v. Southern R. Co. 15 I. C. C. Rep. 487, (837).
- Goff-Kirby Coal Co. v. Bessemer & L. E. R. Co. et al. 15 I. C. C. Rep. 553 (623-B).
- Grafton, W. Va. via Willow Creek, Ind., to Kalamazoo, Mich. Commercial Coal Co. v. Baltimore & O. R. Co. et al. 15 I. C. C. Rep. 11, (734).
- Benwood, W. Va. to western points. Hitchman Coal & Coke Co. v. Baltimore & O. R. Co. et al. 16 I. C. C. Rep. 512, (1006).
- Duluth, Minn. and Superior, Wis. to St. Paul and Minneapolis, Minn. Manahan v. Northern Pacific R. Co. et al. 17 I. C. C. Rep. 95, (1047).
- Black Powder**. Montchanin, Del. through Chadd's Ford Junction to points on the line of the Pennsylvania Railroad in Pennsylvania and Ohio. Du Pont de Nemours Powder Co. v. Pennsylvania R. Co. et al. 17 I. C. C. Rep. 544, (1151).
- Blankets**, Horse. Official Classification Ty. Forest City Freight Bureau v. Ann Arbor R. Co. et al. 18 I. C. C. Rep. 205, (1222).
- Blocks**, Hub, in the rough. Will's Point, Tex. to Stockton, Cal. Southern Timber & Land Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 232, (1230).

- Board, Wood-Pulp.** Wabash, Ind. to St. Louis, Mo. Wabash Coating Mills v. Wabash R. Co. et al. 18 I. C. C. Rep. 91, (1183).
- Boilers.** Kalamazoo, Mich. to Woodford and Argyle, Wis. Lindsay Bros. v. Grand Rapids & Indiana R. Co. et al. 15 I. C. C. Rep. 182, (775).
Kalamazoo, Mich. to Blue Mounds and Mount Horeb, Wis. Lindsay Bros. v. Grand Rapids & Ind. R. Co. et al. 16 I. C. C. Rep. 441, (984).
Kalamazoo, Mich. to points in Wisconsin. Lindsay Bros. v. Michigan Central R. Co. et al. 15 I. C. C. Rep. 40, (741).
- Boots and Shoes.** Between Boston and Des Moines. Bentley & Olmstead Co. et al. v. Lake Shore & M. S. R. Co. et al. 17 I. C. C. Rep. 56, (1041).
Boston and New York to Atlanta, Ga. Kiser Co. et al. v. Central of Ga. R. Co. et al. 17 I. C. C. Rep. 430, (569-B).
- Bottle Caps.** Baltimore, Md. to Denver, Col. Coors et al. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 352, 354, (1261).
- Bottles, Glass.** United States v. Illinois Terminal R. Co. 168 Fed. 546, (817).
Second-Hand, Beer. St. Louis, Mo. to San Antonio, Tex. Newding v. Missouri, K. & T. R. Co. et al. 19 I. C. C. Rep. 29, (1241).
- Boxes, Butter.** Milwaukee to Waterloo, Wis. Roach & Seeber Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 172, (1209).
- Box Shooks.** Pine Bluff, Ark. to Fort Worth, Tex. Sawyer & Austin Lumber Co. v. St. Louis, I. M. & S. R. Co. et al. 19 I. C. C. Rep. 141, (1365).
- Bran.** Salina, Kas. to Hugo, Okla. Lee-Warren Milling Co. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 422, (975).
Minneapolis, Minn. to Marshfield, Wis. Lull & Co. v. Minneapolis, St. P. and S. Ste. M. R. Co. 18 I. C. C. Rep. 355, (1262).
- Brass Beds.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Brass-Covered Iron Tubing.** New York City and neighboring points to San Francisco, Cal. Merle Co. v. New York Central & H. R. R. Co. et al. 17 I. C. C. Rep. 475, (1137).
- Brewers' Rice.** New Orleans, La. Gough & Co. v. Illinois C. R. Co. 15 I. C. C. Rep. 280, (801).
- Brick, Fire.** Joliet, Ill. to Milwaukee, Wis. American Refractories Co. v. Elgin, J. & E. R. Co. et al. 15 I. C. C. Rep. 480, (834).
Fire, Building and Paving. Central Freight Assn. Ty. to Trunk Line Ty. Metropolitan Paving Brick Co. et al. v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 197, (1074).
Pressed. Collinsville, Ill. to Galveston, Tex. Hydraulic Press Brick Co. v. Vandalia R. Co. et al. 15 I. C. C. Rep. 175, (772).
Stack Chimney. North Birmingham, Ala. to Washington, D. C. Alphons-Custodis Chimney Construction Co. v. Southern R. Co. et al. 16 I. C. C. Rep. 584, (1023).
Brazil, Ind. to Minnesota Transfer, Minn. Alphons-Custodis Chimney Construction Co. v. Vandalia R. Co. et al. 16 I. C. C. Rep. 600, (1026).
- General.* Boston, Mass. to Lewiston, Me. James & Abbott Co. v. Boston & M. R. et al. 17 I. C. C. Rep. 273, (1086).
- Broken Glass or Cullet.** New York City to Kane, Pa. Thatcher

- Mfg. Co. v. New York C. & H. R. R. Co. et al. 16 I. C. C. Rep. 126, (897).
- Broom Corn.** Between Duncan, Okla. and Wichita, Kas. and Seattle, Wash. Washington Broom, etc. Co. v. Chicago, R. I. & P. R. Co. 15 I. C. C. Rep. 219, (783).
- Buckwheat.** Cattaraugus, N. Y. to Janesville, Wis. Blodgett Milling Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 384, (963).
- Gobles, Mich. to Janesville, Wis. Blodgett Milling Co. v. Chicago, M. & St. P. R. Co. et al. 17 I. C. C. Rep. 587, (1160).
- Interstate points to Janesville, Wis. Blodgett Milling Co. v. Chicago, I. & S. R. Co. et al. 18 I. C. C. Rep. 439, (1288).
- Buggies.** East St. Louis to Beele, Ark. Parlin & Orendorff v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 145, (761).
- Moline, Ill. to Kalamazoo, Mich. Lull Carriage Co. v. Chicago, K. & S. R. Co. et al. 19 I. C. C. Rep. 15, (1337).
- Building Brick.** Central Freight Assn. Ty. to Trunk Line Ty. Metropolitan Paving Brick Co. et al. v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 197, (1074).
- Building Paper.** St. Joseph, Mich. to Wausau, Wis. Barrett Mfg. Co. v. Graham & Morton Transportation Co. et al. 16 I. C. C. Rep. 399, (968).
- Erie, Pa. to points in Central Assn. Ty. Watson Co. v. Lake Shore & M. S. R. Co. et al. 16 I. C. C. Rep. 124, (896).
- Bullion.** Minnesota to Rhode Island points. Rentz Bros. Inc. v. Chicago, B. & Q. R. Co. et al. 15 I. C. C. Rep. 7, (732).
- Bungs, Wooden.** St. Louis, Mo. to Denver, Colo. Zang Brewing Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 337, (1259).
- Burlap Bags.** New York to Chicago. Kent Co. et al. v. New York C. & H. R. R. Co. et al. 15 I. C. C. Rep. 439, (824).
- Burnt Cotton.** Augusta, Ga. to Lockland, O. Lesser v. Georgia R. et al. 18 I. C. C. Rep. 478, (1289).
- Bushel Baskets.** Traverse City, Mich. to Horatio, Ark. Wells-Higman Co. v. St. Louis, I. M. & S. R. Co. et al. 18 I. C. C. Rep. 175, (1210).
- Granite Falls, Minn. to Chicago, Ill. and points beyond. Morse Produce Co. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 344, (546-B).
- St. Paul and Minneapolis, Minn. to Manistique, Mich. Paynesville and Alexandria. St. Paul Board of Trade et al. v. Minneapolis, St. P. & S. Ste. M. R. Co. 19 I. C. C. Rep. 285, (1374).
- Wellington, O. to Evansville, Wis. Wood Butter Co. v. Cleveland, C., C. & St. L. R. Co. et al. 16 I. C. C. Rep. 374, (960).
- Butter Boxes.** Milwaukee to Waterloo, Wis. Roach & Seeber Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 172, (1209).

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- Cabbage.** Points in States of Mississippi and Louisiana to Chicago, Ill. Davies v. Illinois C. R. Co. 16 I. C. C. Rep. 376, (961).
- Lewiston, N. Y. to Houston, Tex. Millar v. New York C. & H. R. Co. et al. 19 I. C. C. Rep. 78, (1352).
- St. Andrews, S. C. to New York. Voorhees v. Atlantic C. L. R. Co. et al. 16 I. C. C. Rep. 42, (883).

- Canned Goods.** San Jose, Cal. to Roundup, Mont. via Harlowton, Mont. Stone-Ordean-Wells Co. v. Southern P. Co. et al. 18 I. C. C. Rep. 13, (1166).
- Canned Peaches.** Oakhurst, Ga. to Marietta, Ga. Dobbs v. Louisville & N. R. Co. 18 I. C. C. Rep. 210, (1224).
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Martindale, Ga. to Chattanooga, Tenn. Hutcheson & Co. v. Central of Georgia R. Co. 16 I. C. C. Rep. 523, (1007).
- Canned Tomatoes.** Ridley, Md. to Duluth, Minn. Stone-Ordean-Wells Co. v. Philadelphia, B. & W. R. Co. et al. 18 I. C. C. Rep. 160, (1205).
- Cannel Coal.** Goff-Kirby Coal Co. v. Bessemer & L. E. R. Co. et al. 15 I. C. C. Rep. 553, (623-B).
Mill Creek-Elk, W. Va. to interstate points. Mill Creek Cannel Coal Co. v. Coal & Coke R. Co. et al. 17 I. C. C. Rep. 306, (1099).
- Canvas, Old.** Worcester, Mass. to Chicago, Ill. Channon Co. v. Lake Shore & M. S. R. Co. et al. 15 I. C. C. Rep. 551, (848).
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- Car Axles.** Marshall, Tex. to Holdup, La. Crowell & Spencer Lumber Co. v. Texas & P. R. Co. et al. 17 I. C. C. Rep. 333, (1108).
- Cartridges, Ball.** Norfolk, Va., to Annapolis, Md. United States v. New York, P. & N. R. Co. et al. 15 I. C. C. Rep. 233, (789).
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- Car Wheels.** Marshall, Tex. to Holdup, La. Crowell & Spencer Lumber Co. v. Texas & P. R. Co. et al. 17 I. C. C. Rep. 333, (1108).
- Cattle, Range.** Midland, Tex. to Kennebec, S. Dak. Philip v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 418, (972).
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- General.* Anaconda, Mont. to Tacoma, Wash. Carstens Packing Co. v. Butte, Anaconda & Pacific R. Co. et al. 15 I. C. C. Rep. 432, (821).
Anaconda, Mont. to Tacoma, Wash. Carstens Packing Co. v. Northern Pacific R. Co. et al. 14 I. C. C. Rep. 577; 15 I. C. C. Rep. 431, (820).
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Baker City, Ore. to Tacoma, Wash. Carstens Packing Co. v. Oregon R. & N. Co. et al. 17 I. C. C. Rep. 125, (1052).
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- Iowa points to Chicago. Corn Belt Meat Producers' Assn. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 533, (704-B).
Haverhill, Kan. to East St. Louis, Ill. Council v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 188, (914).

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South St. Paul, Minn. to Hammond, Ind. Slimmer & Thomas v. Pennsylvania Co. et al. 16 I. C. C. Rep. 531, (1010).

Cedar Insulated Pins. Marble Falls, Tex. to St. Louis, Mo. Marble Falls Insulator Pin Co. v. Houston & T. C. R. Co. et al. 15 I. C. C. Rep. 167, (768).

Cedar Poles. Hines, Minn. to Clearfield, Ia. Kaye & Carter Lumber Co. v. Minnesota & I. R. Co. et al. 16 I. C. C. Rep. 285, (929).

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Cedar Posts. Points in Idaho to points in Wyoming. Humbird Lumber Co. Ltd. v. Northern P. R. Co. et al. 16 I. C. C. Rep. 449, (988).

Hines, Minn. to Benton, Neb. and Windsor, Mo. Kaye & Carter Lumber Co. v. Minnesota & I. R. Co. et al. 17 I. C. C. Rep. 209, (1075).

Cement, Coal Tar Paving. Between Ensley, Ala. and Lagrange, Ga. Barrett Mfg. Co. v. Louisville & N. R. Co. et al. 15 I. C. C. Rep. 196, (778).

Portland. Chanute, Kas. to Denison, Ia. Sunderland Bros. Co. v. Missouri, K. & T. R. Co. et al. 18 I. C. C. Rep. 425, (1283).

General. Martins Creek, Pa. to Brockton, Mass. Alpha Portland Cement Co. v. Delaware, L. & W. R. Co. et al. 19 I. C. C. Rep. 297, (1378).

Galveston, Tex. to Magdalena, Mex. Awbrey & Semple v. Galveston, H. & S. A. R. Co. et al. 17 I. C. C. Rep. 267, (1085).

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Laramie, Wyo. to points on the Niobrara branch of the Chicago & North Western R. from points beyond Norfolk, Neb. Acme Cement Plaster Co. v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 105, (1188).

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Chains, Iron Conveyor and Machinery Sprocket. East Moline, Ill. to New Orleans, La. Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 500, (1296).

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General. Indianapolis, Ind. to Missouri River points. Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. R. Co. et al. 16 I. C. C. Rep. 56, (886).

Grafton, Wis. to Chicago, Ill. Milwaukee Falls Chair Co. v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 217, (922).

Chairs and Chair Stock. Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).

- Champagne.** Antwerp, Belgium, to Seattle, Wash. De Bary & Co. v. Louisiana Western R. Co. et al. 18 I. C. C. Rep. 527, (1304).
- Cheap Cotton Garments.** Association of Union Made Garment Mfrs. of America v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 405, (970).
- Cheese.** Kewanee, Wis. to Louisville, Ky. Crosby & Meyers v. Goodrich Transit Co. et al. 17 I. C. C. Rep. 175, (1066).
Stations in Wisconsin to Chicago, Ill. Railroad Commission of Wisconsin v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 85, (890).
- Chestnut Ties.** Vanceburg, Ky. to Baltimore, Md. Preston v. Chesapeake & O. R. Co. 16 I. C. C. Rep. 565, (1017).
- Chimney Brick, Stack.** North Birmingham, Ala. to Washington, D. C. Alphons-Custodis Chimney Construction Co. v. Southern R. Co. et al. 16 I. C. C. Rep. 584, (1023).
Brazil, Ind. to Minnesota Transfer, Minn. Alphons Custodis Chimney Construction Co. v. Vandalia R. Co. et al. 16 I. C. C. Rep. 600, (1026).
- Cinders, Mill.** Chicago, Ill. to Omaha, Neb. American Trust & Savings Bank, Trustee in Bankruptcy for the Metals Extraction & Refining Co. v. Chicago, M. & St. P. R. Co. 17 I. C. C. Rep. 11, (1032).
Pyrite. Buffalo, N. Y. to points in Pennsylvania and New Jersey. Naylor & Co. v. Lehigh Valley R. Co. et al. 15 I. C. C. Rep. 9, (733).
- Citrus Fruit.** Los Angeles, Cal. to eastern points. California Fruit Growers' Exchange v. Santa Fe Refrigerator Despatch Co. et al. 17 I. C. C. Rep. 404, (1123).
Points in California to Salt Lake City. Commercial Club, Traffic Bureau, of Salt Lake City, Utah v. Atchison, T. & S. F. R. Co. et al. 19 I. C. C. Rep. 218, (1369).
Points in Florida to destinations north of the Potomac and Ohio Rivers and east of the Missouri. Florida Fruit & Vegetable Shippers' Protective Assn. v. Atlantic Coast Line R. Co. et al. 17 I. C. C. Rep. 552, (710-B).
- Clam Shells.** Mendota, Minn. to La Crosse, Wis. Wisconsin Pearl Button Co. v. Chicago, St. P., M. & O. R. Co. et al. 16 I. C. C. Rep. 80, (888).
- Clay Conduit.** Brazil, Ind. to Racine, Wis. Milwaukee Electric Ry. & Light Co. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 468, (830).
- Clothing, Duck.** Various points to Beloit, Wis. From Ft. Wayne to Beloit. Rosenblatt & Sons v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 261, (1242).
General. New York to Janesville, Wis. Rehberg & Co. v. Erie R. Co. et al. 17 I. C. C. Rep. 508, (1145).
- Clover Hullers.** Newark, O. to Baltimore, Md. Newark Machine Co. v. Pittsburgh, C., C. & St. L. R. Co. et al. 16 I. C. C. Rep. 291, (932).
- Coal, Anthracite.** Duluth, Minn. and Superior, Wis. to St. Paul and Minneapolis, Minn. Manahan v. Northern P. R. Co. et al. 17 I. C. C. Rep. 95, (1047).
Alden, Pa. to Walbrook and Hillen, Baltimore, Md. Enterprise Fuel Co. v. Pennsylvania R. Co. et al. 16 I. C. C. Rep. 219, (923).

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Pennsylvania fields to Holyoke, Mass. Fish & Sons v. Boston & Maine R. 19 I. C. C. Rep. 299, (1379).

Chicago, Ill. to Akron, Colo. Laning-Harris Coal & Grain Co. v. Chicago, B. & Q. R. Co. 18 I. C. C. Rep. 11, (1165).

Big Vein and Small Vein. George's Creek to tidewater, and more distant competitive points. American Coal Co. of Allegheny Co. et al. v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 149, (1057-A); Philadelphia & Reading R. Co. et al. v. Interstate Commerce Commission, 174 Fed. 687, (1057-B).

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Chattanooga, Tenn., Bristol, Tenn. from Middlesboro, Ky. Bristol Board of Mayor and Aldermen v. Southern R. Co. 15 I. C. C. Rep. 487, (837).

Benwood, W. Va. to western points. Hitchman Coal & Coke Co. v. Baltimore & O. R. Co. et al. 16 I. C. C. Rep. 512, (1006).

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Grafton, W. Va. via Willow Creek, Ind. to Kalamazoo, Mich. Commercial Coal Co. v. Baltimore & O. R. Co. et al. 15 I. C. C. Rep. 11, (734).

Cannel. Mill Creek-Elk, W. V. to interstate points. Mill Creek Cannel Coal Co. v. Coal & Coke R. Co. et al. 17 I. C. C. Rep. 306, (1099).

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Domestic. Appalachian Coal Fields in Va. to Bristol, Tenn. The Board of Mayor and Aldermen of the City of Bristol, Tenn. v. Virginia & S. W. R. Co. et al. 15 I. C. C. Rep. 453, (828).

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Soft. Wellston, O. to Manitowoc, Wis. Sunderland Bros. Co. v. Pere Marquette R. Co. et al. 16 I. C. C. Rep. 450, (989).

Sterling, Ill. to Wausau, Neb. Sunderland Bros. Co. v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 212, (920).

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Christopher, Ill. to Ainsworth and Valentine, Nebr. Sunderland Bros. Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 512, (1300).

Green Bay, Wis. to Wetonka and Leola, S. Dak. Pacific Elevator Co. v. Chicago, M. & St. P. R. Co. et al. 17 I. C. C. Rep. 373, (1113).

Splint. Various points to Fort Dodge, Ia. Same points to Des Moines, Ia. and Albert Lea, Minn. Fort Dodge Commercial Club, etc. v. Illinois C. R. Co. et al. 16 I. C. C. Rep. 572, (1022).

Steam. Appalachian Coal Fields in Va. to Bristol, Tenn. The Board of Mayor and Aldermen of the City of Bristol, Tenn. v. Virginia & S. W. R. Co. et al. 15 I. C. C. Rep. 453, (828).

General. Morrisdale Coal Co. v. Pennsylvania R. Co. 176 Pa. 748, (1152).

Superior, Wis. to North and South Dakota points. Hanna Coal Co. v. Northern P. R. Co. et al. 16 I. C. C. Rep. 289, (931).

Fairmont District in W. Va. to St. George, Staten Island, N. Y. Hutchinson-McCandish Co. v. Baltimore & O. R. Co. et al. 16 I. C. C. Rep. 360, (955).

El Paso, Tex. West Texas Fuel Co. v. Texas & P. R. Co. et al. 15 I. C. C. Rep. 443, (825).

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Pocahontas District in Va. to Winston-Salem, N. C. and to Durham, N. C. Points east of Norfolk and Lynchburg, Va. Board of Trade of Winston-Salem, N. C. et al. v. Norfolk & W. R. Co. 16 I. C. C. Rep. 12, (873).

Walsenburg coal fields in Colorado on Colorado & Southern and Denver & Rio Grande Railroads to various points named. Cedar Hill Coal & Coke Co. et al. v. Colorado & Southern R. Co. et al. 16 I. C. C. Rep. 387, (965).

Louisville Co. to points on the Chicago, R. I. & P. R. Co. in Kansas, Nebraska, Missouri, Iowa and Oklahoma. Northern Coal & Coke Co. v. Colorado & S. R. Co. et al. 16 I. C. C. Rep. 369, (959).

Western Colorado to various points in Western States. Grand Junction Mining & Fuel Co. et al. v. Colorado Midland R. Co. et al. 16 I. C. C. Rep. 452, (990).

Iuka, Kan. Cedar Hill Coal & Coke Co. v. Colorado & S. R. Co. et al. 16 I. C. C. Rep. 560, (1015).

Hillsdale Coal & Coke Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 356, (1383).

Milford, Neb. Sunnyside Coal Mining Co. v. Denver & R. G. R. Co. et al. 16 I. C. C. Rep. 558, (1014).

West Virginia to "lake ports" in Ohio. Houston Coal & Coke Co. v. Norfolk & W. R. Co.; Powhatan Coal & Coke Co. v. Norfolk & W. R. Co. 171 Fed. 723, (1060-A); same, 178 Fed. 266, (1060-B).

Walsenburg District in Colorado to points on line of Union Pacific in Kansas. Sunnyside Coal Mining Co. et al. v. Denver & R. G. R. Co. et al. 19 I. C. C. Rep. 20, (1339).

Cedar Hill Coal & Coke Co. v. Colorado & Southern R. Co. et al. 15 I. C. C. Rep. 546, (847).

Trinidad District, Colo. to points on the Atchison, T. & S. F. Road. Cedar Hill Coal & Coke Co. et al. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 73, (753-A); same. 16 I. C. C. Rep. 402, (753-B).

Colorado to Hutchinson, Kas. via Pueblo, Col. and Medora, Kas. South Canon Coal Co. v. Colorado & S. R. Co. et al. 17 I. C. C. Rep. 286, (1090).

West Virginia and Pennsylvania to New Jersey. Central R. Co. of N. J. v. Hite & Rafetto. 166 Fed. 976, (764-A); Hite et al. v. Central R. of N. J. 171 Fed. 370, (764-B).

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Utica, N. Y. *Utica Traffic Bureau v. New York, O. & W. R. Co.* 18 I. C. C. Rep. 168, (1208).

Keene's, N. Y. *Rossie Iron Ore Co. v. New York C. & H. R. R. Co.* 17 I. C. C. Rep. 392, (1119).

Walsenburg District, Colo. to points on Pecos lines and on lines of Atchison, T. & S. F. R. *Cedar Hill Coal and Coke et al. v. Colorado & S. R. Co. et al.* 17 I. C. C. Rep. 479, (1138).

Strong, Col. to Quinn and Cottonwood, S. Dak. *Sunnyside Coal Mining Co. v. Denver & Rio Grande R. Co. et al.* 17 I. C. C. Rep. 540, (1149).

Huntington, Ark. and Bonanza, Ark. to Costoria, Tex., Cleveland, Tex. *Foster Lumber Co. v. Gulf, C. & S. F. R. Co. et al.* 17 I. C. C. Rep. 385, (1117).

Coal mines in Pennsylvania to Point Pleasant, N. J. *Ocean County Coal Co. v. Central R. Co. of New Jersey et al.* 17 I. C. C. Rep. 383, (1116).

Carbon Hill district, Ala. to New Albany, Miss. *Rainey & Rogers v. St. Louis & S. F. R. Co.* 18 I. C. C. Rep. 88, (1182).

Locust Point (Baltimore), Curtis Bay, Md., Philadelphia, Pa. and St. George, Staten Island, N. Y. *Lynah & Read et al. v. Baltimore & O. R. Co. et al.* 18 I. C. C. Rep. 38, (1172).

Appalachia coal field in Va.—Coal Creek field in Tenn. to Nashville, Tenn., Carolina territory and Georgia and Florida territory. *Andy's Ridge Coal Co. et al. v. Southern R. Co. et al.* 18 I. C. C. Rep. 405, (1279).

Between Jermyn, Pa. and points in New York via Carbondale, Pa. *Spring Hill Coal Co. v. Erie R. Co. et al.* 18 I. C. C. Rep. 508, (1298).

Rock Springs, Kemmerer and Diamondville, Wyo. to points in Idaho. *League of Southern Idaho Commercial Clubs v. Oregon S. L. R. Co. et al.* 18 I. C. C. Rep. 562, (1317).

Walsenburg district in Colorado to points in Nebraska on Chicago & N. W. between Chadron and Stuart and to Belle Fourche, S. Dak. *Rock Springs, Wyo. Colorado Coal Traffic Assn. v. Colorado & S. R. Co. et al.* 18 I. C. C. Rep. 572, (1319).

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Pueblo, Col. *Tioga Coal Co. v. Chicago, R. I. & P. R. Co. et al.* 18 I. C. C. Rep. 414, (1281).

Between points on line of Kanawha & M. Ry. Co. in W. Va. and points on the Great Lakes. *Columbus Iron & Steel Co. v. Kanawha & M. R. Co.* 171 Fed. 713, (945-A); same, 178 Fed. 261, (945-B).

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- Coal Oil.** National Petroleum Assn. et al. v. Louisville & N. R. Co. 15 I. C. C. Rep. 473, (833).
- Coal Tar Paving Cement.** Between Ensley, Ala. and Lagrange, Ga. Barrett Mfg. Co. v. Louisville & N. R. Co. et al. 15 I. C. C. Rep. 196, (778).
- C. O. D. Medicines.** Interstate Remedy Co. v. American Exp. Co. 16 I. C. C. Rep. 436, (982).
- Coffee.** St. Louis, Ohio River crossings, Indianapolis, New Orleans, and Atlantic Sea Board points. Indianapolis Freight Bureau v. Pennsylvania R. Co. et al. 15 I. C. C. Rep. 567, (850).
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- Coffee Pot Percolators.** Western Classification Ty. Landers, Frary & Clark v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 511, (1146).
- Coiled Elm Hoops.** Cardington, O. to Green Bay, Wis. Noble v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 420, (974).
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Tallulah, La. to Lime City, Tex. Noble v. Vicksburg, S. & P. R. Co. et al. 18 I. C. C. Rep. 224, (1228).
- Coke.** West Virginia-Pennsylvania fields to El Paso, Tex. and Globe, Ark. destined to Arkansas and Arizona points. Copper Queen Consolidated Mining Co. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 154, (1204).
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Leckrone and West Brownsville, Pa. to Los Angeles, Cal. Spreckles Bros. Commercial Co. v. Monongahela R. Co. et al. 18 I. C. C. Rep. 190, (1216).
- Compoboard.** Minneapolis, Minn. to Lemmon, S. Dak. Quammen & Austad Lumber Co. v. Chicago, M. & St. P. R. Co. et al. 19 I. C. C. Rep. 110, (1357).
- Compressed Cotton.** Port Gibson, Miss., Hermanville, Miss., New Orleans, La. Planters Gin & Compress Co. et al. v. Yazoo & M. V. R. Co. 16 I. C. C. Rep. 131, (900).
- Conveyor Chains, Iron.** East Moline, Ill. to New Orleans, La. Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 500, (1296).
- Corn, Broom.** Between Duncan, Okla. and Wichita, Kas. and Seattle, Wash. Washington Broom, etc. Co. v. Chicago, R. I. & P. R. Co. 15 I. C. C. Rep. 219, (783).
- Ear.** Enfield, Ill. to Henderson, Ky. Henderson Elevator Co. v. Louisville & N. R. Co. 18 I. C. C. Rep. 538, (1308).
- In the Shuck.** Tupelo, Okla. to Forrest City, Ark. Hill & Webb v. Missouri, K. & T. R. Co. et al. 16 I. C. C. Rep. 569, (1019).
- Snapped.** Okemah, Okla. to Terrell, Tex. Tully Grain Co. v. Fort Smith & W. R. Co. et al. 16 I. C. C. Rep. 28, (876).
- Calvin, Okla. to Arkadelphia, Ark. The Canadian Valley Grain Co. v. Chicago, R. I. & P. R. Co. et al. 18 I. C. C. Rep. 509, (1299).
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& Elevator Co. v. Chicago, R. I. & P. R. Co. et al. 18 I. C. C. Rep. 580, (1321).

General. Talmage and Brock, Neb. to St. Louis, Mo. Bartling Grain Co. v. Missouri P. R. Co. 16 I. C. C. Rep. 494, (1000).

Various points in Missouri, Kansas and Oklahoma to Gulfport, Miss. Marshall & Michel Grain Co. v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 385, (964); same, 18 I. C. C. Rep. 228 (964-B).

Ninnekah, Ind. Ty. to Lettsworth, La. Ocheltree Grain Co. v. Texas & P. R. Co. et al. 18 I. C. C. Rep. 412, (1280).

Cincinnati O. to Morehead, Ky. Kimberly v. Chesapeake & O. R. Co. 17 I. C. C. Rep. 335, (1109).

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Glidden, Ia. to Chetek, Wis. Glavin Grain Co. v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 241, (1232).

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Ohio and Mississippi River crossings from Nashville, Tenn. and other points to "southeastern points of destination." Atlantic C. L. R. Co. et al. v. Macon Grocery Co. et al. 166 Fed. 206, (712-B); Macon Grocery Co. v. Atlantic C. L. R. Co. 215 U. S. 501, (712-C).

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Compressed. Port Gibson, Miss., Hermanville, Miss., New Orleans, La. Planters Gin & Compress Co. et al. v. Yazoo & M. V. R. Co. 16 I. C. C. Rep. 131, (900).

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Uncompressed. Vincent, Ark. to Memphis, Tenn. Barton, etc. Co. v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 222, (784).

General. On compress platforms. Anderson, Clayton & Co. et al. v. Chicago, R. I. & P. R. Co. et al. 18 I. C. C. Rep. 340, (1260). Covington and Brownsville, Tenn. and Jackson, Tenn. to New England Mills. Railroad Commission of Tennessee v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 418, (1127).

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Memphis, Tenn. Merchants' Cotton Press & Storage Co. et al. v. Illinois Central R. Co. and Memphis Warehouse Co. et al. 17 I. C. C. Rep. 98, (1048).

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- Lawton, Okla. to Chickasha, Okla. Anderson, Clayton & Co. v. St. Louis & S. F. R. Co. et al. 17 I. C. C. Rep. 12, (1033).
- Cotton Garments, Cheap.** Assn. of Union Made Garment Mfrs. of America v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 405, (970).
- Cotton Linters.** Malden, Mo. to Minneapolis, Minn. Falls & Co. v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 269, (797).
Meridian, Miss. to New Orleans, La. Salmon Bros. & Co. v. New Orleans & Northeastern R. Co. 15 I. C. C. Rep. 332, (810).
Montgomery, Ala. to Minneapolis, Minn. Southern Cotton Oil Co. v. Louisville & N. R. Co. et al. 18 I. C. C. Rep. 180, (1212).
Barnwell, S. C. to Pawtucket, R. I. Southern Cotton Oil Co. v. Southern R. Co. et al. 19 I. C. C. Rep. 79, (1353).
- Cotton Seed.** Kilbourne, La. to Pine Bluff, Ark. Bluff City Oil Co. v. St. Louis, I. M. & S. R. Co. 16 I. C. C. Rep. 296, (934).
- Cotton-Seed Cake.** Bartlett, Tex. to Winchester, Kas. and Onaga, Kas. Stock Yards Cotton & Linseed Meal Co. v. Missouri, K. & T. R. Co. et al. 17 I. C. C. Rep. 295, (1094).
- Cotton-Seed Hulls.** Fayetteville, N. C. to Cartersville, Ga. Southern Cotton Oil Co. v. Atlantic C. L. R. Co. et al. 18 I. C. C. Rep. 275, (1250).
- Cotton-Seed Hulls and Meal.** Little Rock, Ark. to Memphis, Tenn. Memphis Freight Bureau v. St. Louis S. W. R. Co. 18 I. C. C. Rep. 67, (1179).
- Cotton-Seed Oil.** Points east of the Mississippi to northern and northeastern points. Memphis Cotton Oil Co. et al. v. Illinois C. R. Co. et al. 17 I. C. C. Rep. 313, (1103).
- Cotton-Seed Products.** Southern Pac. Terminal Co. et al. v. Interstate Commerce Commission et al. 166 Fed. 134, (691-B).
- Cottonwood Box Shooks.** Greenville, Miss. to Cedar Rapids, Ia. Holley Matthews Mfg. Co. v. Yazoo & M. V. R. Co. et al. 15 I. C. C. Rep. 436, (823).
- Crated Sign-Board.** Chicago, Ill. to Wabash, Ind. Knox v. Wabash R. Co. 18 I. C. C. Rep. 185, (1214).
- Cream.** Dairy districts to centralizer plants at Chicago and neighboring points. Beatrice Creamery Co. et al. v. Illinois Cent. R. Co. et al. 15 I. C. C. Rep. 109, (756).
- Cross Ties.** Sault Ste. Marie, Mich. to Thiensville, Wis. MacGillis & Gibbs Co. v. Chicago, M. & St. P. R. Co. et al. 15 I. C. C. Rep. 329, (809).
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- Crushed Stone.** Cedar Bluff, Ky. to Baton Rouge, La. Southern Bitulithic Co. v. Illinois C. R. Co. et al. 17 I. C. C. Rep. 300, (1096).
- Cullet or Broken Glass.** New York City to Kane, Pa. Thatcher Mfg. Co. v. New York C. & H. R. R. Co. et al. 16 I. C. C. Rep. 126, (897).

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D.

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Deciduous Fruits. Points in California to Salt Lake City. Commercial Club, Traffic Bureau, of Salt Lake City, Utah v. Atchison, T. & S. F. R. Co. et al. 19 I. C. C. Rep. 218, (1369).

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Dried Beans. Grand Rapids, Mich. to Newport, Ark. Stevens Grocer Co. v. Grand Rapids & I. R. Co. et al. 18 I. C. C. Rep. 147, (1202).

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Fresno, Cal. to Roundup, Mont. via Harlowton, Mont. Stone-Ordean-Wells Co. v. Southern P. Co. et al. 18 I. C. C. Rep. 15, (1167).

Dried Peas. Guaymas, Mex. to Philadelphia, Pa. Maldonado & Co. v. Ferrocarril De Sonora et al. 18 I. C. C. Rep. 65, (1178).

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- St. Paul and Minneapolis, Minn. to Manistique, Mich. Paynesville and Alexandria. St. Paul Board of Trade et al. v. Minneapolis, St. P. & S. Ste. M. R. Co., 19 I. C. C. Rep. 285, (1374).
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- Elevator Guides.** Chicago, Ill. to Portland, Ore. Otis Elevator Co. v. Chicago G. W. R. Co. et al. 16 I. C. C. Rep. 502, (1003).
- Elm Hoops, Coiled.** Cardington, O. to Green Bay, Wis. Noble v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 420, (974).
- Pioneer, O. to Coveseville, Va. Noble v. Toledo & Western R. Co. et al. 18 I. C. C. Rep. 494, (1293).
- Tallulah, La. to Lime City, Tex. Noble v. Vicksburg, S. & P. R. Co. et al. 18 I. C. C. Rep. 224, (1228).
- General.* Prairie Grove, Ark. to Nashville, Tenn. Noble v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 186, (913).
- Emigrants' Movables.** Armour to Lemmon, S. D. and from Lemmon to Hettinger, N. D. Henley et al. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 382, (1272).
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- Emigrants' Outfits.** Fletcher, Okla. to Bovina, Tex. Porter et al. v. St. Louis & S. F. R. Co. et al. 15 I. C. C. Rep. 1, (731).
- Empty Beer Kegs.** Frontenac, Kas. to Chicago, Ill. Schoenhofen Brewing Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 329, (1106).
- Empty Beer Packages.** Omaha, Neb. to Milwaukee, Wis. Pabst Brewing Co. et al. v. Chicago, M. & St. P. R. Co. et al. 17 I. C. C. Rep. 359, (1111).
- Empty Oil Barrels.** Points in New Mexico to El Paso, Tex. Great Western Oil Co. v. Atchison, T. & S. F. R. Co. 16 I. C. C. Rep. 505, (1004).
- Engines.** Kalamazoo, Mich. to Woodford and Argyll, Wis. Lindsay Bros. v. Grand Rapids & Indiana R. Co. et al. 15 I. C. C. Rep. 182, (775).
- Hopkins, Minn. Minneapolis Threshing Machine Co. v. Chicago, St. P., M. & O. R. Co. et al. 17 I. C. C. Rep. 189, (1071).
- Explosives, Masurite.** Masurite Explosive Co. v. Norfolk & W. R. Co. et al. 16 I. C. C. Rep. 530, (626-B).

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- Farm Wagons.** Louisville, Ky. to Sacramento, Cal. and from Toledo, O. to Portland and Eugene, Ore. and Seattle, Wash. Kentucky Wagon Mfg. Co. et al. v. Illinois Central R. Co. et al. 18 I. C. C. Rep. 360, (1264).
- Racine, Wis. to Abilene, Tex. Racine-Sattley Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 488, (997).
- Fence, Iron.** Brighton, O. to Tombstone, Ariz. Barnum Iron Works v. Cleveland, C., C. & St. L. R. Co. et al. 18 I. C. C. Rep. 94, (1185).
- Woven-Wire.* Richmond, Ind. to Billings, Okla., reconsigned to Wichita, Kas. Townley Metal & Hardware Co. v. Chicago, R. I. & P. R. Co. 18 I. C. C. Rep. 378, (1270).

- Fence Posts.** Beaudette and Warroad, Minn. to points in North and South Dakota. Partridge Lumber Co. v. Great Northern R. Co. et al. 17 I. C. C. Rep. 276, (1087).
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- Fencing, Wire.** El Paso, Tex. to Las Cruces, N. M. Bascom Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 354, (1110).
- Fertilizer.** Montgomery, Ala. to Mississippi points. Montgomery Freight Bureau v. Western R. of Alabama et al. 15 I. C. C. Rep. 199, (779).
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 Shreveport, La. to Arkansas points. Virginia-Carolina Chemical Co. v. St. Louis S. W. R. Co. 16 I. C. C. Rep. 49, (885).
- Fire Brick.** Joliet, Ill. to Milwaukee, Wis. American Refractories Co. v. Elgin, J. & E. R. Co. et al. 15 I. C. C. Rep. 480, (834).
 Central Freight Assn. Ty. to Trunk Line Ty. Metropolitan Paving Brick Co. et al. v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 197, (1074).
- Fire Places and Grates, Gas and Coal.** Steubenville, O. to San Francisco, Cal. Ohio Foundry Co. v. Pittsburgh, C., C. & St. L. R. Co. et al. 19 I. C. C. Rep. 65, (1349).
- Fir Lumber, Rough Green.** Points in Willamette Valley to San Francisco. Southern Pac. Co. v. Interstate Commerce Commission, 215 U. S. 226, (667-B).
- Fish.** Pensacola, Fla. to points in Alabama—Mobile to points in Alabama. Saunders & Co. v. Southern Express Co. 18 I. C. C. Rep. 415, (1282).
- Flaxseed.** Britton, S. Dak. to Red Wing, Minn. Red Wing Linseed Co. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 47, (744).
- Flaxseed Screenings.** Chicago, Ill. to Milwaukee, Wis. Rotsted Co. v. Chicago & N. W. R. Co. 18 I. C. C. Rep. 257, (1240).
- Flour, Rye.** Janesville, Wis. to Kansas City, Mo. Bowman-Kranz Lumber Co. et al. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 277, (800).
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 Between Kansas points, Phoenix and Pacific Coast points. Valley Flour Mills v. Atchison, T. & S. F. R. Co. et al. 16 I. C. C. Rep. 73, (887).
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- Folding Beds.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Folding Chairs.** Chicago, Ill. to St. Joseph, Mo. Royal Metal Mfg. Co. v. Chicago G. W. R. Co. 18 I. C. C. Rep. 255, (1239).
- Forest Products.** Interior points to New Orleans, La. New Orleans Bd. of Trade et al. v. Illinois C. R. Co. et al. 17 I. C. C. Rep. 496, (1141).
- Fresh Meats.** Swift & Co. v. Chicago & A. R. Co. 16 I. C. C. Rep. 426, (978). Fort Worth, Tex. to Rocky Mount, N. C. Swift & Co. v. Texas & P. R. Co. et al. 16 I. C. C. Rep. 442, (985).
- Fruit, Apples.** Ozark Fruit Region in Arkansas and Missouri to Eastern, southeastern and southern points. Ozark Fruit Growers' Assn. v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 134, (901). Reno, Nev. to Alturas, Cal. Bunch & Tussey v. Nevada-California-Oregon R. 17 I. C. C. Rep. 506, (1143). Seymour and Cedar Gap, Mo. to Minneapolis and St. Paul, Minn. Gamble-Robinson Commission Co. v. St. Louis & S. F. R. Co. et al. 19 I. C. C. Rep. 114, (1359).
- Bananas.** New Orleans, La. to El Paso, Tex. Payne et al. v. Morgan's L. & T. R. & S. S. Co. et al. 15 I. C. C. Rep. 185, (776). New Orleans, La. and Mobile, Ala. to points in Iowa. Lagomarcino-Grupe Co. et al. v. Illinois C. R. Co. et al. 16 I. C. C. Rep. 151, (907). Mount Ross and Elizaville, N. Y. to Birmingham, Ala. Pankey & Holmes v. Central New England R. Co. et al. 18 I. C. C. Rep. 578, (1320).
- Washington points to points in North Dakota. Stacy Mercantile Co. v. Minneapolis, St. M. & S. Ste. M. R. Co. et al. 18 I. C. C. Rep. 550, (1312).
- New Orleans to Texas common points. Waco Freight Bureau et al. v. Houston & T. C. R. Co. et al. 19 I. C. C. Rep. 22, (1340).
- Citrus.** Los Angeles, Cal. to eastern points. California Fruit Growers' Exchange v. Santa Fe Refrigerator Despatch Co. et al. 17 I. C. C. Rep. 404, (1123).
- Points in California to Salt Lake City. Commercial Club, Traffic Bureau, of Salt Lake City, Utah v. Atchison, T. & S. F. R. Co. et al. 19 I. C. C. Rep. 218, (1369).
- Points in Florida to destination north of the Potomac and Ohio Rivers and east of the Missouri. Florida Fruit & Vegetable Shippers' Protective Assn. v. Atlantic C. L. R. Co. et al. 17 I. C. C. Rep. 552, (710-B).
- Deciduous.** Points in California to Salt Lake City. Commercial

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Dried. Fresno, Cal. to Bozeman and Billings, Mont. Stone-Ordeman-Wells Co. v. Northern P. R. Co. et al. 16 I. C. C. Rep. 313, (937).

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San Francisco, Cal. to Chinook, Mont. Ryan v. Great Northern R. Co. et al. 18 I. C. C. Rep. 226, (1229).

Grapes. Seaboard points to Pittsburgh, Pa. Connolly-Fanning Co. et al v. Pennsylvania R. Co. et al. 17 I. C. C. Rep. 283, (1089).
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Montrose, Ia. to Rochester, Minn. Gamble-Robinson Commission Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 357, (1263).
South Haven, Mich. to La Crosse, Wis. Lamb Co. v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 279, (1252).

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Oranges. Southern California to eastern destinations. Arlington Heights Fruit Exchange et al. v. Southern Pacific Co. et al. 19 I. C. C. Rep. 148, (1367*).

Peaches, Canned. Martindale, Ga. to Chattanooga, Tenn. Hutcheson & Co. v. Central of Ga. R. Co. 16 I. C. C. Rep. 523, (1007).

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Peaches. Horatio, Ark. to Memphis, Tenn. Memphis Freight Bureau v. Kansas City Southern R. Co. et al. 17 I. C. C. Rep. 90, (1046).

Points in southwestern Missouri and northwestern Arkansas. Ozark Fruit Growers' Assn. v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 106, (895).

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Watermelons. Altoona, Pa.—Lowell, Fla. to Pittsburgh, Pa. Wilson Produce Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 1, (1333).

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- Pittsburgh, Pa.** Blume & Co. v. Wells Fargo & Co. 15 I. C. C. Rep. 53, (746).
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- Fruit Packages.** Traverse City, Mich. to Montrose, Ia. Wells-Higman Co. v. Grand Rapids & Indiana R. Co. et al. 16 I. C. C. Rep. 339, (947).
- Fuel Wood.** La Harpe, Ill. to Boulder, Col. Place v. Toledo, Peoria & Western R. Co. et al. 15 I. C. C. Rep. 543, (846).
- Furniture. Chairs.** Grafton, Wis. to Chicago, Ill. Milwaukee Falls Chair Co. v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 217, (922).
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- Furniture Knobs or Trimmings.** Grand Haven, Mich., Waterbury, Conn. and Rome, N. Y. to San Francisco, Cal. Merle Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 471, (1136).
- Fuse, Safety.** Avon, Conn. to Pleasant Prairie, Wis. Du Pont De Nemours Powder Co. v. New York, N. H. & H. R. Co. et al. 16 I. C. C. Rep. 351, (951).

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- Garbanzo.** Guaymas, Mex. to Philadelphia, Pa. Maldonado & Co. v. Ferrocarril De Sonora et al. 18 I. C. C. Rep. 65, (1178).
- Garments, Cheap Cotton.** Assn. of Union Made Garment Mfrs. of America v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 405, (970).
- Gasoline.** Reno, Pa. to Milton Junction, Wis. Empire Oil Works v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 401, (969).
- Gasoline Stoves.** Lorain, Ohio and Detroit, Mich. to Oconomowoc, Wis. Lorleburg Co. v. New York C. & St. L. R. Co. et al. 18 I. C. C. Rep. 183, (1213).

- General.** Washington, D. C. from Salem, S. C. *Germain Co. v. Philadelphia, B. & W. R. Co. et al.* 18 I. C. C. Rep. 96, (1186).
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- (712-B); Macon Grocery Co. v. Atlantic C. L. R. Co. 215 U. S. 501, (712-C).
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- Ginger Ale.** Waukesha, Wis. to Macon, Ga. Redingfield & Co. v. Wisconsin Central R. Co. et al. 16 I. C. C. Rep. 93, (891).
- Glass, Broken,—or Cullet.** New York City to Kane, Pa. Thatcher Mfg. Co. v. New York C. & H. R. R. Co. et al. 16 I. C. C. Rep. 126, (897).
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- Skylight. Rough Rolled, Ribbed and Wired. Dunbar, Wash. and Allegheny, Pa. to San Francisco, Cal. Fuller & Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 202, (1220).
- General. Chicago, Ill. to Chisholm, Minn. and Marquette, Mich. Brunswick-Balke-Collender Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 165, (1207).
- Glass Bottles.** United States v. Illinois Terminal R. Co. 168 Fed. 546, (817).
- Go-Carts.** Elkhart, Ind. to Tacoma, Wash. Harmon & Co. v. Lake Shore & M. S. R. Co. et al. 17 I. C. C. Rep. 394, (1120).
- Grain, Barley.** Porta Costa, Cal. to Milwaukee, Wis. Horst Co. v. Southern P. Co. et al. 17 I. C. C. Rep. 576, (1156).
- Bran.** Salina, Kas. to Hugo, Okla. Lee-Warren Milling Co. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 422, (975).
- Minneapolis, Minn. to Marshfield, Wis. Lull & Co. v. Minneapolis, St. P. & S. Ste. M. R. Co. 18 I. C. C. Rep. 355, (1262).
- Buckwheat.** Interstate points to Janesville, Wis. Blodgett Milling Co. v. Chicago, I. & S. R. Co. et al. 18 I. C. C. Rep. 439, (1288).
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- Cattaraugus, N. Y. to Janesville, Wis. Blodgett Milling Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 384, (963).
- Corn.** Cincinnati, O. to Morehead, Ky. Kimberly v. Chesapeake & O. R. Co. 17 I. C. C. Rep. 335, (1109).
- Glidden, Ia. to Chetek, Wis. Glavin Grain Co. v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 241, (1232).
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- Talmage and Brock, Neb. to St. Louis, Mo. Bartling Grain Co. v. Missouri P. R. Co. 16 I. C. C. Rep. 494, (1000).
- Various points in Missouri, Kansas and Oklahoma to Gulfport, Miss. Marshall & Michel Grain Co. v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 385, (964-A); same, 18 I. C. C. Rep. 228, (964-B).
- Celina, O. to Johnstown, Pa. Palmer & Miller v. Lake Erie & W. R. Co. et al. 15 I. C. C. Rep. 107, (755).
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- Ohio and Mississippi River crossings from Nashville, Tenn. and other points to "southeastern points of destination." Atlantic C. L. R. Co. et al. v. Macon Grocery Co. et al. 166 Fed. 206,

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Houston, Tex. to New Orleans, La. Bayou City Rice Mills, et al. v. Texas & N. O. R. Co. et al. 18 I. C. C. Rep. 490, (1292).

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Kansas City, Kas. to Galveston, Tex. Rosenbaum Grain Co. v. Missouri, K. & T. R. Co. et al. 15 I. C. C. Rep. 499, (839).

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Minneapolis to New York.—Buffalo to New York. Jennison Co. et al. v. Great Northern R. Co. et al. 18 I. C. C. Rep. 113, (1190).

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Oklahoma, Kansas. Southern Kansas Millers' Commercial Club v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 607, (860).

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Evansville, Ky. Henderson, Ky. from Omaha, Neb. and Council Bluffs, Ia. through Henderson to Cairo and other Ohio River

crossings. Henderson Elevator Co. et al. v. Illinois Central R. Co. 17 I. C. C. Rep. 573, (1155).

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Kansas grain fields for export direct to Gulf ports—Kansas City. Kansas City Transportation Bureau of the Commercial Club et al. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 491, (838). Points on the Rock Island system, formerly on the line of the Burlington, Cedar Rapids & Northern Ry. Co., to Milwaukee. Chamber of Commerce of the City of Milwaukee v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 460, (829).

Western points to Cedar Rapids, Ia. Douglas & Co. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 232, (925).

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ouri, Kansas & Texas Ry. Co. Midland Mill & Elevator Co. v. Kansas S. W. R. Co. et al. 15 I. C. C. Rep. 510, (862).

Kansas points to Memphis, Tenn., and Little Rock, Ark.—Oklahoma points to Memphis, Tenn., and Little Rock, Ark. Southern Kansas Millers' Commercial Club v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 605, (859).

Kansas City to eastern points from west of the Missouri River, Omaha, Kansas City. Kansas City Transportation Bureau of the Commercial Club v. Atchison, T. & S. F. R. Co. et al. 16 I. C. C. Rep. 195, (917).

Grain Products. Kansas points to Memphis, Tenn. and Little Rock, Ark.—Oklahoma points to Memphis, Tenn. and Little Rock, Ark. Southern Kansas Millers' Commercial Club v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 605, (859).

Points on line of Kansas Southwestern to all points on lines of Midland Valley Ry. Co., Kansas City Southern Ry. Co. and Missouri, Kansas & Texas Ry. Co. Midland Mill & Elevator Co. v. Kansas S. W. R. Co. et al. 15 I. C. C. Rep. 610, (862).

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Montrose, Ia. to Rochester, Minn. Gamble-Robinson Commission Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 357, (1263).

Paw Paw, Mich. to Green Bay, Wis. Platten Produce Co. v. Kalamazoo, L. S. & C. R. Co. et al. 18 I. C. C. Rep. 249, (1237).

Pewee Valley, Ky. to Pittsburgh, Pa. Crutchfield & Woolfolk v. Louisville & N. R. Co. et al. 17 I. C. C. Rep. 302, (1097).

South Haven, Mich. to La Crosse, Wis. Lamb Co. v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 279, (1252).

Grates and Fire Places, Gas and Coal. Steubenville, O. to San Francisco, Cal. Ohio Foundry Co. v. Pittsburgh, C., C. & St. L. R. Co. et al. 19 I. C. C. Rep. 65, (1349).

Grease, Non-Edible. Austin, Minn. to Dayton, O. Dayton Chamber of Commerce v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 82, (889).

Groceries. St. Paul, Minn. to Lemmon, S. Dak. Allen & Co. v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 293, (933).

Ground Iron Ore. Iron Ridge, Wis. to Michigan City, Ind. and Louisville, Ky. Winters Metallic Paint Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 562, (1016).

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Gypsum Rock or Wall Plaster. Grand Rapids, Mich. to points in

Official and Southern Classification Ty., the State of Wisconsin and parts of Illinois in Western Classification Ty. Acme Cement Plaster Co. v. Lake Shore & M. S. R. Co. et al. 17 I. C. C. Rep. 30, (1038).

H.

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Baltimore, Md. to Denver, Col. Coors et al. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 352, 354, (1261).

Hard-Wood Ashes. Bay City, Mich. to Norfolk, Va. Munroe & Sons v. Michigan Central R. Co. et al. 17 I. C. C. Rep. 27, (1037).

Hard-Wood Lumber. West Virginia and Kentucky points to Windsor, Ont. Windsor Turned Goods Co. v. Chesapeake & O. R. Co. et al. 18 I. C. C. Rep. 162, (1206).

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Baled. Batesville, Kan. via Kansas City to Clinton, Ia. Tyler Commission Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 490, (998).

General. St. Louis, Mo. Rodehaver v. Missouri, K. & T. R. Co. 16 I. C. C. Rep. 146, (905).

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Headings and Hoops, Iron. St. Louis, Mo. to Denver, Col. Zang Brewing Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 337, (1259).

Heaters, Hot-Water, and Parts. Lorain, Ohio and Detroit, Mich. to Oconomowoc, Wis. Lorleburg Co. v. New York C. & St. L. R. Co. et al. 18 I. C. C. Rep. 183, (1213).

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Hogs. Iowa points to Chicago. Corn Belt Meat Producers' Assn. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 533, (704-B).

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Elm. Prairie Grove, Ark. to Nashville, Tenn. Noble v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 186, (913).

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Horse Blankets. Official Classification Ty. Forest City Freight Bureau v. Ann Arbor R. Co. et al. 18 I. C. C. Rep. 205, (1222).

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ern Cotton Oil Co. v. Atlantic C. L. R. Co. et al. 18 I. C. C. Rep. 275, (1250).

I.

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Scrap. Douglas, Ariz. to El Paso, Tex. Darbyshire-Harvie Iron & Machine Co. v. El Paso & S. W. R. Co. 15 I. C. C. Rep. 451, (827).

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Iron Beds. Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).

Iron Conveyor Chains. East Moline, Ill. to New Orleans, La. Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 500, (1296).

Iron Fences. Brighton, O. to Tombstone, Ariz. Barnum Iron Works v. Cleveland, C., C. & St. L. R. Co. et al. 18 I. C. C. Rep. 94, (1185).

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- ver, Col. Zang Brewing Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 337, (1259).
- Iron Ore, Ground.** Iron Ridge, Wis. to Michigan City, Ind. and Louisville, Ky. Winters Metallic Paint Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 562, (1016).
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- Iron Pyrites, Imported.** New York Harbor points to Linndale and Cleveland, O. American Agricultural Chemical Co. v. Erie R. Co. et al. 16 I. C. C. Rep. 320, (941).
- Iron Roofing.** Wheeling, W. Va. to Nowata, Okla. Wheeling Corrugating Co. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 125, (1195).
- Iron Wagon Axles.** Wilkes-Barre, Pa. to Carthage, N. C. Tyson & Jones Buggy Co. v. Aberdeen & Asheboro R. Co. et al. 17 I. C. C. Rep. 330, (1107).

J.

- Jewelers' Sweepings.** Minnesota to Rhode Island points. Rentz Bros., Inc. v. Chicago, B. & Q. R. Co. et al. 15 I. C. C. Rep. 7, (732).

K.

- Kegs, Beer, Empty.** Frontenac, Kas. to Chicago, Ill. Schoenhofen Brewing Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 329, (1106).

L.

- Ladders, Long.** Official Classification Territory. Indianapolis Freight Bureau v. Cleveland, C., C. & St. L. R. Co. et al. 15 I. C. C. Rep. 370, (815).
- Laths.** Beecher Lake, Wis. to Chicago, Ill., Pembine. Neufeld v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 26, (875).
- Lead Ore and Concentrates.** Coeur d'Alene district in Idaho to Carnegie, Pa. Pennsylvania Smelting Co. v. Northern Pacific R. Co. et al. 19 I. C. C. Rep. 60, (1347).
- Leaf Tobacco.** Kentucky and Tennessee points to Monterey, Mex. via Laredo. Black Horse Tobacco Co. v. Illinois Central R. Co. et al. 17 I. C. C. Rep. 588, (1161).
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- Letter Copiers, Roller.** Rochester, N. Y. to points in Western Classi-

- fication Territory. Yawman & Erbe Mfg. Co. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 260, (795).
- Lettuce.** St. Andrews, S. C. to New York, N. Y. Voorhees v. Atlantic C. L. R. Co. et al. 16 I. C. C. Rep. 45, (884).
- Lima Beans.** California points to Omaha, Neb. Commercial Club of Omaha v. Southern P. Co. et al. 18 I. C. C. Rep. 53, (1175).
- Lime, Agricultural.** Englishtown, N. J. to Frederick Road, Md. Okerson v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 127, (1196). *General.* Ash Grove, Mo. to Pine Bluffs, Wyo. Sunderland Bros. Co. v. St. Louis & S. F. R. Co. et al. 18 I. C. C. Rep. 545, (1310). Atchison, T. & S. F. R. Co. v. United States. 170 Fed. 250, (662-B). Bunker Hill to Martinsburg, W. Va. Standard Lime & Stone Co. et al. v. Cumberland Valley R. Co. et al. 15 I. C. C. Rep. 620, (865).
- Lime Stone.** Bunker Hill to Martinsburg, W. Va. Standard Lime & Stone Co. et al. v. Cumberland Valley R. Co. et al. 15 I. C. C. Rep. 620, (865).
- Link Belting.** East Moline, Ill. to New Orleans, La. Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 500, (1296).
- Liquid Asphaltum.** Caney, Kas. to Minneapolis, Minn. Central Commercial Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 166, (1063).
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- Live Stock.** Ozark Fruit Region in Arkansas and Missouri to eastern, southeastern and southern points. Ozark Fruit Growers' Assn. v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 134, (901). Iowa points to Chicago. Corn Belt Meat Producers' Assn. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 533, (704-B).
- Loaded Paper Shells.** Kings Mills, O. to Muncie, Ind. Goddard Co. v. Cleveland, C., C. & St. L. R. Co. et al. 16 I. C. C. Rep. 298, (935).
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- Altus, Okla. Cameron & Co. Inc. v. Houston, E. & W. T. R. Co. et al. 19 I. C. C. Rep. 146, (1367).
- Bellamy, Ala. to Holly Beach, N. J. Alabama Lumber & Export Co. v. Philadelphia, B. & W. R. Co. et al. 19 I. C. C. Rep. 295, (1377).
- South to Ohio and vicinity. Jenks Lumber Co. v. Southern R. Co. et al. 17 I. C. C. Rep. 58, (369-C and 370-B).
- Williams Flagstaff and Cliffs, Ariz. to Phoenix, Ariz. Saginaw & Manistee Lumber Co. et al. v. Atchison, T. & S. F. R. Co. 19 I. C. C. Rep. 119, (1361).
- Le Compt and Cady Switch, La. to Omaha, Neb. and various other points via Alexandria, La. Cady Lumber Co. v. Missouri Pacific R. Co. et al. 19 I. C. C. Rep. 12, (1336).
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- Wallabout Basin of New York Harbor. Mosson Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 30, (1342).
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- Oregon City, Oreg. to Cripple Creek, Colo. Serry v. Southern Pacific Co. et al. 18 I. C. C. Rep. 554, (1314).
- Ely, Minn. to Missouri. Duluth & Iron Range Ry. Co. v. Chicago, St. P., M. & O. R. Co. et al. 18 I. C. C. Rep. 485, (1291).
- Points in Willamette Valley in Oregon to San Francisco and adjacent points. Southern Pacific Co. et al. v. Interstate Commerce Commission. 177 Fed. 963, (667-C).
- Ludington, Mich. to Toledo, O., United States v. Stearns Salt & Lumber Co. 165 Fed. 735, (729).
- Cairo, Tex. to Memphis, Tenn. Saner-Whiteman Lumber Co. v. Texas & N. O. R. Co. et al. 17 I. C. C. Rep. 290, (1092).
- Fosteria, Tex. to Gary, Ind. Foster Lumber Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 292, (1093).
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- Fort Smith, Ark. Beekman Lumber Co. v. Kansas City Southern R. Co. et al. 17 I. C. C. Rep. 86, (1044).
- Ellisville, Miss. to Greenville, Pa. Germain Co. v. New Orleans & N. E. R. Co. et al. 17 I. C. C. Rep. 22, (1036).
- Beckville, Tex. to Oklahoma points. Corporation Commission of the State of Oklahoma, for the Use and Benefit of the Robinson, Crawford & Fuller Lumber Co. v. Chicago, R. I. & G. R. Co. et al. 17 I. C. C. Rep. 379, (1115).
- Wheeler Lumber, Bridge & Supply Co. v. Southern P. Co. et al. 16 I. C. C. Rep. 547, (1012).
- Memphis, Tenn., Cairo, Ill. Sondheimer Co. v. Illinois Central R. Co. et al. 17 I. C. C. Rep. 60, (1042).
- Through Menominee, Mich. and Marinette, Wis. Roper Lumber-Cedar Co. v. Chicago & N. W. R. Co. 16 I. C. C. Rep. 382, (962).
- Points in Idaho to points in Wyoming. Humbird Lumber Co., Ltd. v. Northern P. R. Co. et al. 16 I. C. C. Rep. 449, (988).
- Ashland, Tex. to Watika, Okla. Watika Coal & Lumber Co. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 533, (844).

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Missoula District to Missouri River and points east. Big Black-foot Milling Co. v. Northern P. R. Co. et al. 16 I. C. C. Rep. 173, (910).

Flat Head Co., Mont. to points in North Dakota—Spokane and Pacific Coast groups, to points in North Dakota. Kalispell Lumber Co. et al. v. Great Northern R. Co. et al. 16 I. C. C. Rep. 164, (909).

Warsaw, N. C. to Chappaqua, N. Y. Harlow Lumber Co. v. Atlantic Coast Line R. Co. et al. 15 I. C. C. Rep. 501, (840).

Los Angeles, Cal. National Lumber Co. v. San Pedro, L. A. & S. L. R. Co. 15 I. C. C. Rep. 434, (822).

Harper, W. Va. to New Haven, Conn. Kile & Morgan Co. v. Deep-water R. Co. et al. 15 I. C. C. Rep. 235, (790).

Wabeno, Wis. Jones Lumber Co. v. Chicago & N. W. R. Co. 15 I. C. C. Rep. 427, (818).

Gleason, Ark. to Dallas, Tex. Beekman Lumber Co. v. St. Louis, I. M. & S. R. Co. et al. 15 I. C. C. Rep. 274, (799).

Omaha, Neb. to Canton, S. Dak. Bowman-Kranz Lumber Co. et al. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 277, (800).

M.

Machine, Dredging, Parts of. Chicago, Ill. to Oroville, Cal. Link-Belt Co. v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 566, (1018).

Machinery, *Agricultural*. Bancroft, Tex. to Crowley, La. Advance Thresher Co. v. Orange & Northwestern R. Co. et al. 15 I. C. C. Rep. 599, (856).

Electrical Hoisting. Yonkers, N. Y. to San Francisco, Cal. Otis Elevator Co. v. New York C. & H. R. R. Co. et al. 17 I. C. C. Rep. 3, (1030).

Paper Mill. Pittsfield, Mass. to Millinocket, Me. Jones & Sons v. Boston & A. R. Co. et al. 15 I. C. C. Rep. 226, (785).

Saw Mill. Ogemaw, Ark. to Sodus, La. Pleasant Hill Lumber Co. v. St. Louis S. W. R. Co. et al. 15 I. C. C. Rep. 532, (843).

General. Allegheny, Pa. to Victoria Mines, Ont. Carlin's Sons Co. v. Baltimore & O. R. Co. et al. 16 I. C. C. Rep. 477, (994).

Machinery Sprocket Chains. East Moline, Ill. to New Orleans, La. Woodward, Wight & Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 500, (1296).

Machines, Threshing. Hopkins, Minn. Minneapolis Threshing Machine Co. v. Chicago, St. P. M. & O. R. Co. et al. 17 I. C. C. Rep. 189, (1071).

Malt. Chilton, Wis. to Kansas City, Mo. Chilton Malting Co., Ltd. v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 10, (872).

Mantels, Wood. Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).

Buffalo, N. Y. to San Francisco, Cal. Peerless Agencies Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 218, (1078).

Manure. Chicago, Ill. to Toledo, O. Crane Bros. v. Cincinnati, H. & D. R. Co. et al. 16 I. C. C. Rep. 571, (1020).

Manure Spreaders. DeKalb, Ill. to Olivia and Hutchinson, Minn. Smith Mfg. Co. v. Chicago, M. & G. R. Co. et al. 16 I. C. C. Rep. 447, (987).

- Marble.** Long Island City, N. Y. to Shipman, Va. Cohen & Co. v. Southern R. Co. et al. 16 I. C. C. Rep. 177, (911).
- Marble Slabs.** Chicago, Ill. to Chisholm, Minn. and Marquette, Mich. Brunswick-Balke-Collender Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 165, (1207).
- Masurite.** Masurite Explosive Co. v. Norfolk & W. R. Co. et al. 16 I. C. C. Rep. 530, (626-B).
- Mattresses.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Meal, Oil.** Minneapolis, Minn. to Mila, Mo. Stock Yards Cotton & Linseed Meal Co. v. Chicago, M. & St. P. R. et al. 16 I. C. C. Rep. 366, (957).
- Meats, Fresh.** Swift & Co. v. Chicago & A. R. Co. 16 I. C. C. Rep. 426, (978).
Fort Worth, Tex. to Rocky Mount, N. C. Swift & Co. v. Texas & P. R. Co. et al. 16 I. C. C. Rep. 442, (985).
General. Ohio and Mississippi River crossings from Nashville, Tenn. and other points to "southeastern points of destination."
Atlantic C. L. R. Co. et al. v. Macon Grocery Co. et al. 166 Fed. 206, (712-B); Macon Grocery Co. v. Atlantic C. L. R. Co. 215 U. S. 501, (712-C).
- Medicines.** Interstate Remedy Co. v. American Exp. Co. 16 I. C. C. Rep. 436, (982).
- Metallic Cartridges.** Kings Mills, O. to Muncie, Ind. Goddard Co. v. Cleveland, C., C. & St. L. R. Co. et al. 16 I. C. C. Rep. 298, (935).
- Milk.** West Pawlett, Vt. and intermediate stations to Eagle Bridge, N. Y. destined to Boston, Mass. Hood & Sons v. Delaware & H. Co. 17 I. C. C. Rep. 15, (1035).
- Milk Cans, Empty.** Country stations to Omaha. Fairmont Creamery Co. v. Pacific Express Co. 15 I. C. C. Rep. 134, (757).
- Mill Cinders.** Chicago, Ill. to Omaha, Neb. American Trust & Savings Bank, Trustee in Bankruptcy for the Metals Extraction & Refining Co. v. Chicago, M. & St. P. R. Co. 17 I. C. C. Rep. 11, (1032).
- Mineral Water.** Waukesha, Wis. to Macon, Ga. Bedingfield & Co. v. Wisconsin Central R. Co. et al. 16 I. C. C. Rep. 93, (891).
- Mining Timbers.** San Pedro wharf, Cal. to Charleston, Ariz. Blinn Lumber Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 430, (1287).
- Molasses.** Philadelphia, Pa. to Buffalo, N. Y. Prentiss & Co. v. Pennsylvania R. Co. 19 I. C. C. Rep. 68, (1350).
- Mole Traps.** Niles, Mich. to Chicago, Ill. Reddick v. Michigan C. R. Co. 16 I. C. C. Rep. 492, (999).
- Money.** American Bankers' Assn. v. American Express Co. et al. 15 I. C. C. Rep. 15, (735).
- Motorcycles.** Eastern and middle western points to Pacific Coast terminals. Rose et al. v. Boston & A. R. Co. et al. 18 I. C. C. Rep. 427, (1286).
- Mussel Shells.** Terre Haute, Ind. to Davenport, Ia. Davenport Pearl Button Co. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 193, (1072).

N.

- Nails, Wire.** El Paso, Tex. to Las Cruces, N. Mex. Bascom Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 354, (1110).
- Natural Ice.** Harvest points in N. J. and Pa. to N. Y., Hoboken, Jersey City, Phila., etc. Mountain Ice Co. et al. v. Delaware, L. & W. R. Co. et al. 15 I. C. C. Rep. 305, (806-A); same. 17 I. C. C. Rep. 447, (806-B).
- New Furniture.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Newspapers.** Grand Mere, Quebec to San Francisco, Cal. Williar v. Canadian Northern Quebec R. Co. et al. 17 I. C. C. Rep. 304, (1098).
- Non-Edible Grease.** Austin, Minn. to Dayton, O. Dayton Chamber of Commerce v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 82, (889).

O.

- Oak Lumber.** DeQueen, Ark. to Memphis, Tenn. Hendrickson Lumber Co. v. Kansas City Southern R. Co. et al. 16 I. C. C. Rep. 129, (899).
- Oak Ties.** Texas points to Douglas, Ariz. Continental Lumber & Tie Co. et al. v. Texas & P. R. Co. et al. 18 I. C. C. Rep. 129, (1197).
- Oats, Shelled.** Hope, Ark. to Olla, La. Venus v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 136, (758).
- General.* Chicago, Ill. to Milwaukee, Wis. Rotsted Co. v. Chicago & N. W. R. Co. 18 I. C. C. Rep. 257, (1240).
- New York City. Turnbull Co. v. Erie R. Co. 17 I. C. C. Rep. 123, (1051).
- Oil, Coal.** National Petroleum Assn. et al. v. Louisville & N. R. Co. 15 I. C. C. Rep. 473, (833).
- General.* Whiting, Ind. to St. Louis, Mo. United States v. Standard Oil Co. 170 Fed. 988, (530-C).
- New York, Cleveland and Minneapolis to San Francisco and Seattle. Fuller & Co. et al. v. Pittsburgh, C. & Y. R. Co. et al. 17 I. C. C. Rep. 594, (1162).
- Edgewater, N. J. to Struthers, Pa. Wilburine Oil Works, Ltd. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 548, (1311).
- Muskogee, Okla. to New Orleans, La. Record Oil Refining Co. et al. v. Midland Valley R. Co. et al. 19 I. C. C. Rep. 132, (1362).
- Paola, Kas. to Boonville and Holden, Mo. Paola Refining Co. v. Missouri, K. & T. R. Co. 15 I. C. C. Rep. 29, (738).
- Stanards, N. Y. to Struthers, Pa. Clark Co. v. Buffalo & S. R. Co. et al. 18 I. C. C. Rep. 380, (1271).
- Oil Barrels, Empty.** Points in New Mexico to El Paso, Tex. Great Western Oil Co. v. Atchison, T. & S. F. R. Co. 16 I. C. C. Rep. 505, (1004).
- Oil Meal.** Minneapolis, Minn. to Milo, Mo. Stock Yards Cotton & Linseed Meal Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 366, (957).

- Oil-Well Supplies.** Fishers, Ind. to Bartlesville, Okla. Gilchrist v. Lake Erie & Western R. Co. et al. 16 I. C. C. Rep. 318, (940).
- Old Canvas.** Worcester, Mass. to Chicago, Ill. Channon Co. v. Lake Shore & M. S. R. Co. et al. 15 I. C. C. Rep. 551, (848).
- Onions.** Reno, Nev. to Alturas, Cal. Lauer & Son v. Nevada-California-Oregon R. 17 I. C. C. Rep. 488, (1139).
- Oranges.** Southern California to eastern destinations. Arlington Heights Fruit Exchange et al. v. Southern Pacific Co. et al. 19 I. C. C. Rep. 148, (1367*).
- Ore, Ground Iron.** Iron Ridge, Wis. to Michigan City, Ind. and Louisville, Ky. Winters Metallic Paint Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 562, (1016).
Iron Ridge, Wis. to various points in other states. Winters Metallic Paint Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 587, (1024).
Iron Ridge Junction, Wis. to Spokane, Wash. and Denver, Colo. Winters Metallic Paint Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 596, (1327).
- Ore, Lead, and Concentrates.** Coeur d'Alene district in Idaho to Carnegie, Pa. Pennsylvania Smelting Co. v. Northern Pacific R. Co. et al. 19 I. C. C. Rep. 60, (1347).
- Overalls.** Various points to Beloit, Wis.—From Ft. Wayne to Beloit. Rosenblatt & Sons v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 261, (1242).

P.

- Packing House Products.** Fort Worth, Tex. to Rocky Mount, N. C. Swift & Co. v. Texas & P. R. Co. et al. 16 I. C. C. Rep. 442, (985).
- Pails, Paper.** Chicago, Ill. to San Francisco, Cal. Zellerbach Paper Co. v. Atchison, T. & S. F. R. Co. 16 I. C. C. Rep. 128, (898).
- Pants.** Various points to Beloit, Wis.—From Ft. Wayne to Beloit. Rosenblatt & Sons v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 261, (1242).
- Paper, Building.** St. Joseph, Mich. to Wausau, Wis. Barrett Mfg. Co. v. Graham & Morton Transportation Co. et al. 16 I. C. C. Rep. 399, (968).
Erie, Pa. to points in Central Assn. Ty. Watson Co. v. Lake Shore & M. S. R. Co. et al. 16 I. C. C. Rep. 124, (896).
Print. Sartells, Minn. to California points. Willamette Pulp & Paper Co. v. Northern Pacific R. Co. et al. 18 I. C. C. Rep. 388, (1274).
Roofing. Erie, Pa. to points in Central Assn. Ty. Watson Co. v. Lake Shore & M. S. R. Co. et al. 16 I. C. C. Rep. 124, (896).
- Paper Mill Machinery.** Pittsfield, Mass. to Millinocket, Me. Jones & Sons v. Boston & A. R. Co. et al. 15 I. C. C. Rep. 226, (785).
- Paper Pails.** Chicago, Ill. to San Francisco, Cal. Zellerbach Paper Co. v. Atchison, T. & S. F. R. Co. 16 I. C. C. Rep. 128, (898).
- Paper Stock.** Chicago, Ill. to South Bend, Ind. LaSalle Paper Co. v. Michigan C. R. Co. et al. 16 I. C. C. Rep. 149, (906).
- Partitions.** Chicago, Ill. to Chisholm, Minn. and Marquette, Mich. Brunswick-Balke-Collender Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 165, (1207).
- Paving Brick.** Central Freight Assn. Ty. to Trunk Line Ty. Metro-

- politan Paving Brick Co. et al. v. Ann Arbor R. Co. et al. 17 I. C. C. Rep. 197, (1074).
- Peaches, Canned.** Oakhurst, Ga. to Marietta, Ga. Dobbs v. Louisville & N. R. Co. 18 I. C. C. Rep. 210, (1224).
- Martindale, Ga. to Chattanooga, Tenn. Hutcheson & Co. v. Central of Georgia R. Co. 16 I. C. C. Rep. 523, (1007).
- Atlanta, Tex. to Chicago, Ill. Godfrey & Son v. Texas, Ark. & La. R. Co. et al. 15 I. C. C. Rep. 65, (749).
- General.** Horatio, Ark. to Memphis, Tenn. Memphis Freight Bureau v. Kansas City Southern R. Co. et al. 17 I. C. C. Rep. 90, (1046).
- Points in southwestern Missouri and northwestern Arkansas. Ozark Fruit Growers' Assn. v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 106, (895).
- Peas, Dried.** Guaymas, Mex. to Philadelphia, Pa. Maldonado & Co. v. Ferrocarril De Sonora et al. 18 I. C. C. Rep. 65, (1178).
- Percolators, Coffeepot.** Western Classification Ty. Landers, Frary & Clark v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 511, (1146).
- Persulphate of Iron.** Aurora, Ill. to San Francisco, Cal. Jobbins, Inc. v. Chicago & N. W. R. Co. et al. 17 I. C. C. Rep. 297, (1095).
- Petroleum.** Kansas and Missouri points to Points in Oklahoma. State of Oklahoma v. Chicago, R. I. & P. R. Co. et al. 15 I. C. C. Rep. 42, (742).
- Between Rochester and Norwood, N. Y. New York Central & H. R. R. Co. v. United States. 166 Fed. 267, (471-B).
- Paola, Kas. to Kansas City, Kas. via Missouri. Hafey v. St. Louis & S. F. R. Co. et al. 15 I. C. C. Rep. 245, (792).
- Coffeyville, Kas. to Memphis, Tenn. and Omaha, Neb.—Whiting, Ind. and other northern points. National Petroleum Assn. et al. v. Missouri Pacific R. Co. et al. 18 I. C. C. Rep. 593, (1325).
- Petroleum and Products.** Coffeyville, Kas. to Enid, Okla. National Refining Co. v. Atchison, T. & S. F. R. Co. 18 I. C. C. Rep. 389, (1275).
- Petroleum Products.** National Petroleum Assn. et al. v. Louisville & N. R. Co. 15 I. C. C. Rep. 473, (833).
- Phosphate Rock.** Mt. Pleasant and Centerville Districts, Tenn. to Illinois, Mich., and eastern states, via Ohio River crossings. Darling & Co. et al. v. Baltimore & O. R. Co. et al. 15 I. C. C. Rep. 79, (754).
- St. Blaise, Tenn. to Riddlesburg, Pa. Woodward & Dickerson v. Louisville & N. R. Co. et al. 15 I. C. C. Rep. 170, (771-A); same, (771-B).
- Baltimore, Md. and Buffalo, N. Y., the Tennessee phosphate fields and Washington Court House, O., to Prairie Switch, Ind. Bash Fertilizer Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 522, (1303).
- Pickles.** Ottumwa, Ia. to Kansas City, Mo. Ottumwa Pickle Co. v. Chicago, M. & St. P. R. Co. 16 I. C. C. Rep. 368, (958).
- Pig Iron.** Sheffield, Ala. to Hutchinson, Kan. De Camp Bros. et al. v. Southern R. Co. et al. 16 I. C. C. Rep. 144, (903).
- Pineapples.** Points in Florida to destinations north of the Potomac and Ohio Rivers and east of the Missouri. Florida Fruit & Vegetable Shippers' Protective Assn. v. Atlantic C. L. R. Co. et al. 17 I. C. C. Rep. 552, (710-B).

- Pin Yon Soap.** Iowa Soap Co. v. Chicago, B. & Q. R. Co. et al. 16 I. C. C. Rep. 444, (986).
- Pipe.** Fischers, Ind. to Bartlesville, Okla. Gilechrist v. Lake Erie & Western R. Co. et al. 16 I. C. C. Rep. 318, (940).
- Plaster, Wall.** Grand Rapids, Mich. to points in Official and Southern Classification Ty., the State of Wisconsin and parts of Illinois in Western Classification Ty. Acme Cement Plaster Co. v. Lake Shore & M. S. R. Co. et al. 17 I. C. C. Rep. 30, (1038).
General. Garbutt, N. Y. to points in New York, Pennsylvania and New England, Sacket Plaster Board Co. v. Buffalo, R. & P. R. Co. et al. 18 I. C. C. Rep. 374, (1268).
 Grand Rapids, Mich. to Houghton, Mich. via Milwaukee, Wis. Grand Rapids Plaster Co. v. Pere Marquette R. Co. et al. 15 I. C. C. Rep. 68, (750).
- Plaster Board.** Garbutt, N. Y. to points in New York, Pennsylvania and New England. Sackett Plaster Board Co. v. Buffalo, R. & P. R. Co. et al. 18 I. C. C. Rep. 374, (1268).
- Plate Glass.** St. Paul, Minn. to Douglas, N. Dak. Bennett v. Minneapolis, St. P. & S. Ste. M. R. Co. 15 I. C. C. Rep. 301, (805).
- Poles, Cedar.** Chicago, Ill. to Brady, Tex. Macgillis & Gibbs Co. v. Chicago & Eastern Ill. R. Co. et al. 16 I. C. C. Rep. 40, (882).
 Hines, Minn. to Clearfield, Ia. Kaye & Carter Lumber Co. v. Minnesota & I. R. Co. et al. 16 I. C. C. Rep. 285, (929).
 Telegraph and Telephone. Beaudette and Warroad, Minn. to points in North and South Dakota. Partridge Lumber Co. v. Great Northern R. Co. et al. 17 I. C. C. Rep. 276, (1087).
General. Through Menominee, Mich. and Marinette, Wis. Roper Lumber-Cedar Co. v. Chicago & N. W. R. Co. 16 I. C. C. Rep. 382, (962).
 La Porte, Minn. to Poplar Bluff, Mo. Duluth Log Co. v. Minnesota & I. R. Co. et al. 15 I. C. C. Rep. 627, (866).
 Washburn, Wis. to Winside, Neb. Duluth Log Co. v. Chicago, St. P., M. & O. R. Co. et al. 16 I. C. C. Rep. 38, (881).
 Laporte, Minn. to Louisville, Ky. Duluth Log Co. v. Minnesota & I. R. Co. et al. 15 I. C. C. Rep. 192, (777).
- Portland Cement.** Chanute, Kas. to Denison, Ia. Sunderland Bros. Co. v. Missouri, K. & T. R. Co. et al. 18 I. C. C. Rep. 425, (1283).
- Posts, Cedar.** Hines, Minn. to Benton, Neb. and Windsor, Mo. Kaye & Carter Lumber Co. v. Minnesota & I. R. Co. et al. 17 I. C. C. Rep. 209, (1075).
 Points in Idaho to points in Wyoming. Humbird Lumber Co. Ltd. v. Northern P. R. Co. et al. 16 I. C. C. Rep. 449, (988).
Fence. Asher, Okla. via Amarillo, Tex. to St. Vrain, N. M. Snook & James v. Atchison, T. & S. F. R. Co. et al. 16 I. C. C. Rep. 356, (953).
 Beaudette and Warroad, Minn. to points in North and South Dakota. Partridge Lumber Co. v. Great Northern R. Co. et al. 17 I. C. C. Rep. 276, (1087).
General. Through Menominee, Mich. and Marinette, Wis. Roper Lumber-Cedar Co. v. Chicago & N. W. R. Co. 16 I. C. C. Rep. 382, (962).
 Wittenberg, Wis. to Whittemore, Ia. Wheeler Lumber, Bridge & Supply Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 525, (1008).

- Potatoes.** Pound, Wausaukee and Beaver, Wis. to Painesdale, Mich. Thomas v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 364, (956).
 Reno, Nev. to Alturas, Cal. Lauer & Son v. Nevada-California-Oregon R. 17 I. C. C. Rep. 488, (1139).
 East Virginia points to Hinton, W. Va. Hinton Fruit & Produce Co. v. Chesapeake & O. R. Co. et al. 17 I. C. C. Rep. 578, (1157).
- Poultry.** Swift & Co. v. Chicago & A. R. Co. 16 I. C. C. Rep. 426, (978).
- Powder,** Saluting. Norfolk, Va. to Annapolis, Md. United States v. New York, P. & N. R. Co. et al. 15 I. C. C. Rep. 233, (789).
- Pressed Brick.** Collinsville, Ill. to Galveston, Tex. Hydraulic Press Brick Co. v. Vandalia R. Co. et al. 15 I. C. C. Rep. 175, (772).
- Print Paper.** Sartells, Minn. to California points. Willamette Pulp & Paper Co. v. Northern Pacific R. Co. et al. 18 I. C. C. Rep. 388, (1274).
- Produce.** Pittsburgh, Pa. Wilson Produce Co. et al. v. Pennsylvania R. Co. et al. 16 I. C. C. Rep. 116, (680-B).
- Provisions.** Argenta, Ark. Brook-Ranch Mill & Elevator Co. v. Missouri P. R. Co. et al. 17 I. C. C. Rep. 158, (1058).
- Pyrite Cinder.** Buffalo, N. Y. to points in Pennsylvania and New Jersey. Naylor & Co. v. Lehigh Valley R. Co. et al. 15 I. C. C. Rep. 9, (733).
- Pyrites,** Imported Iron. New York Harbor points to Linndale and Cleveland, O. American Agricultural Chemical Co. v. Erie R. Co. et al. 16 I. C. C. Rep. 320, (941).

E.

- Radiators.** Lorain, Ohio and Detroit, Mich. to Oconomowoc, Wis. Lorleburg Co. v. New York C. & St. L. R. Co. et al. 18 I. C. C. Rep. 183, (1213).
- Rails, Steel.** Onalaska, Ark. to Batchellor, La. Northern Lumber Mfg. Co. v. Texas & P. R. Co. et al. 19 I. C. C. Rep. 54, (1345).
 Tee. Chicago, Ill. to Portland, Ore. Otis Elevator Co. v. Chicago G. W. R. Co. et al. 16 I. C. C. Rep. 502, (1003).
- Range Cattle.** Midland, Tex. to Kennebec, S. Dak. Philip v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 418, (972).
- Raw Sugar.** New York City to Reidsville, N. C. via water and rail. Penn Tobacco Co. v. Old Dominion S. S. Co. et al. 18 I. C. C. Rep. 197, (1219).
- Refrigerator.** Chicago, Ill. to Chisholm, Minn. and Marquette, Mich. Brunswick-Balke-Collender Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 165, (1207).
- Rice, Brewers'.** New Orleans, La. Gough & Co. v. Illinois C. R. Co. 15 I. C. C. Rep. 280, (801).
General. New Orleans, La. to Billings, Mont. Stone-Ordean-Wells Co. v. Chicago, B. & Q. R. Co. et al. 16 I. C. C. Rep. 30, (877).
 Houston, Tex. to New Orleans, La. Bayou City Rice Mills et al. v. Texas & N. O. R. Co. et al. 18 I. C. C. Rep. 490, (1292).
- Rock,** Gypsum. Grand Rapids, Mich. to points in Official and Southern Classification Ty., the State of Wisconsin and parts of Illinois in Western Classification Ty. Acme Cement Plaster Co. v. Lake Shore & M. S. R. Co. et al. 17 I. C. C. Rep. 30, (1038).

- Rock Salt.** Cuylerville, N. Y. to Detroit, Mich., Hegewisch, Ill. and Chicago, Ill. Delray Salt Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 259, (1241).
 Lyons, Kas. to Lusk, Wyo. Sunderland Bros. Co. v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 433, (980).
Roller Letter Copiers. Rochester, N. Y. to points in Western Classification Territory. Yawman & Erbe Mfg. Co. v. Atchison, T. & S. F. R. Co. et al. 15 I. C. C. Rep. 260, (795).
Roofing, Iron. Wheeling, W. Va. to Nowata, Okla. Wheeling Corrugating Co. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 125, (1195).
Roofing Material. Carthage, O. to Nashville, Tenn. Chatfield Mfg. Co. v. Louisville & N. R. Co. et al. 18 I. C. C. Rep. 385, (1273).
Roofing Paper. Erie, Pa. to points in Central Assn. Ty. Watson Co. v. Lake Shore & M. S. R. Co. et al. 16 I. C. C. Rep. 124, (896).
Rosin. Louin, Miss. to Peoria, Ill. Central Commercial Co. v. Mobile, J. & K. C. R. Co. et al. 15 I. C. C. Rep. 25, (736).
Rye Flour. Janesville, Wis. to Kansas City, Mo. Bowman-Kranz Lumber Co. et al. v. Chicago, M. & St. P. R. Co. 15 I. C. C. Rep. 277, (800).

S.

- Safety Fuse.** Avon, Conn. to Pleasant Prairie, Wis. Du Pont De Nemours Powder Co. v. New York, N. H. & H. R. Co. et al. 16 I. C. C. Rep. 351, (951).
Salt, Rock. Lyons, Kas. to Lusk, Wyo. Sunderland Bros. v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 433, (980).
 Cuylerville, N. Y. to Detroit, Mich. Hegewisch, Ill. and Chicago, Ill. Delray Salt Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 259, (1241).
General. Washburn, Wis. to western points on line via Minnesota Transfer. Delray Salt Co. v. Chicago, St. P., M. & O. R. Co. et al. 16 I. C. C. Rep. 507, (1005).
 Fort Smith, Ark., Muskogee, Okla., Kansas producing territory. Muskogee Traffic Bureau v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 169, (1065).
 West Virginia points to Lynchburg, and Roanoke, Va. destined for coast line points. Liverpool Salt & Coal Co. et al. v. Baltimore & O. R. Co. et al. 18 I. C. C. Rep. 51, (1174).
 Detroit, Mich. to Buffalo and New York City. Delray Salt Co. v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 268, (1244).
 Detroit, Mich. to Memphis, Tenn. Delray Salt Co. v. Detroit, T. & I. R. Co. et al. 18 I. C. C. Rep. 245, (1234); Same v. Michigan Central R. Co. et al. 18 I. C. C. Rep. 247, (1235), and 18 I. C. C. Rep. 248, (1236).
Saluting Powder. Norfolk, Va. to Annapolis, Md. United States v. New York, P. & N. R. Co. et al. 15 I. C. C. Rep. 233, (789).
Sash. Minneapolis, Minn. to Lemmon, S. Dak. Quammen & Austad Lumber Co. v. Chicago, M. & St. P. R. Co. et al. 19 I. C. C. Rep. 110, (1357).
Sawdust. East Grand Forks, Minn. to Minnewauken, N. Dak. Plummer Co. v. Northern P. R. Co. 18 I. C. C. Rep. 530, (1306).
 Duluth, Minn. to Andover, S. Dak. Diehl, doing business as Capi-

- tal Pine Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 190, (915).
- Saw Mill Machinery.** Ogemaw, Ark. to Sodus, La. Pleasant Hill Lumber Co. v. St. Louis S. W. R. Co. et al. 15 I. C. C. Rep. 532, (843).
- Scrap Iron.** Douglas, Ariz. to El Paso, Tex. Darbyshire-Harvie Iron & Machine Co. v. El Paso & S. W. R. Co. 15 I. C. C. Rep. 451, (827).
- St. Louis, Mo. to Canton, Ill. Ohio Iron & Metal Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 299, (1254).
- Sea-Island Cotton.** Alachua, Fla., Gainsville, Hawthorne, Fla., Savannah, Ga. Burr et al. Railroad Commissioners of the State of Florida v. Seaboard Air Line R. et al. 16 I. C. C. Rep. 1, (870).
- Second-Hand Tanner's Outfit.** Milwaukee, Wis. to Tacoma, Wash. Carstens Packing Co. v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 469, (992).
- Sheep.** California to Tacoma, Wash. Carstens Packing Co. v. Southern Pacific Co. 17 I. C. C. Rep. 6, (1031).
- Shelled Oats.** Hope, Ark, to Olla, La. Venus v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 136, (758).
- Shells, Clam.** Mendota, Minn. to La Crosse, Wis. Wisconsin Pearl Button Co. v. Chicago, St. P., M. & O. R. Co. et al. 16 I. C. C. Rep. 80, (888).
- Loaded Paper.** Kings Mills, O. to Muncie, Ind. Goddard Co. v. Cleveland, C., C. & St. L. R. Co. et al. 16 I. C. C. Rep. 298, (935).
- Mussel.** Terre Haute, Ind. to Davenport, Ia. Davenport Pearl Button Co. v. Chicago, B. & Q. R. Co. et al. 17 I. C. C. Rep. 193, (1072).
- Shingles.** Menasha, Wis. Folmer & Co. v. Great Northern R. Co. et al. 15 I. C. C. Rep. 33, (739).
- Lake City, Ala. to Koshkonong, Mo. Keich Mfg. Co. v. St. Louis & S. F. R. Co. 15 I. C. C. Rep. 230, (788).
- Through Menominee, Mich. and Marinette, Wis. Roper Lumber-Cedar Co. v. Chicago & N. W. R. Co. 16 I. C. C. Rep. 382, (962).
- Monroe, La. to Crowell, Tex. Menefee Bros. v. Vicksburg, S. & P. R. Co. et al. 19 I. C. C. Rep. 117, (1360).
- Shirts.** Various points to Beloit, Wis.—From Ft. Wayne to Beloit. Rosenblatt & Sons v. Chicago & N. W. R. Co. et al. 18 I. C. C. Rep. 261, (1242).
- Shoes and Boots.** Boston and New York to Atlanta, Ga. Kiser Co. et al. v. Central of Ga. R. Co. et al. 17 I. C. C. Rep. 430, (569-B).
- Between Boston and Des Moines. Bentley & Olmsted Co. et al. v. Lake Shore & M. S. R. Co. et al. 17 I. C. C. Rep. 56, (1041).
- Shovel, Steam, Parts of.** Coffeyville, Kan. to Toledo, O. Vulcan Steam Shovel Co. v. Missouri P. R. Co. et al. 18 I. C. C. Rep. 265, (1243).
- Showcases.** Quincy, Ill. to San Francisco, Cal. Newton Gum Co. et al. v. Chicago, B. & Q. R. Co. et al. 16 I. C. C. Rep. 341, (948).
- Sign-Board, Crated.** Chicago, Ill. to Wabash, Ind. Knox v. Wabash R. Co. 18 I. C. C. Rep. 185, (1214).
- Skylight Glass, Rough Rolled, Ribbed and Wired.** Dunbar, Wash. and Allegheny, Pa. to San Francisco, Cal. Fuller & Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 202, (1220).
- Slabs, Marble.** Chicago, Ill. to Chisholm, Minn. and Marquette, Mich.

- Brunswick-Balke-Collender Co. v. Chicago, M. & St. P. R. Co. et al. 18 I. C. C. Rep. 165, (1207).
- Slack Coal.** Gallup, N. Mex. to El Paso, Tex. Consumers' Ice Co. et al. v. Atchison, T. & S. F. R. Co. 18 I. C. C. Rep. 277, (1251).
- Small Live Animals.** Vineland, N. J. to various points in the U. S. Davis v. West Jersey Exp. Co. et al. 16 I. C. C. Rep. 214, (921).
- Small Vein Coal.** George's Creek, Md. to tidewater, and more distant competitive points. American Coal Co. of Allegheny Co. et al. v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 149, (1057-A); Philadelphia & Reading R. Co. et al. v. Interstate Commerce Commission. 174 Fed. 687, (1057-B).
- Smokestack.** Chattanooga, Tenn. to Huntsville, Ala. Jones v. Southern R. Co. 18 I. C. C. Rep. 150, (1203).
- Snapped Corn.** Okemah, Okla. to Terrell, Tex. Tully Grain Co. v. Fort Smith & W. R. Co. et al. 16 I. C. C. Rep. 28, (876). Calvin, Okla. to Arkadelphia, Ark. The Canadian Valley Grain Co. v. Chicago, R. I. & P. R. Co. et al. 18 I. C. C. Rep. 509, (1299). Ninnekah and Addington, Okla. to Clarksville, Tex. Texas Grain & Elevator Co. v. Chicago, R. I. & P. R. Co. et al. 18 I. C. C. Rep. 580, (1321). Calvin, Okla. to De Queen, Ark. Rutland, etc. Doing Business as The Canadian Valley Grain Co. v. Chicago, R. I. & P. R. Co. et al. 19 I. C. C. Rep. 108, (1356).
- Soap.** Pin Yon. Iowa Soap Co. v. Chicago, B. & Q. R. Co. et al. 16 I. C. C. Rep. 444, (986).
- Soft Coal.** Sterling, Ill. to Wausa, Neb. Sunderland Bros. Co. v. Chicago & N. W. R. Co. et al. 16 I. C. C. Rep. 212, (920). Wellston, O. to Manitowoc, Wis. Sunderland Bros. Co. v. Pere Marquette R. Co. et al. 16 I. C. C. Rep. 450, (989). Green Bay, Wis. to Wetonka and Leola, S. Dak. Pacific Elevator Co. v. Chicago, M. & St. P. R. Co. et al. 17 I. C. C. Rep. 373, (1113). Burlington, Ill. Sage & Co. v. Illinois C. R. Co. 18 I. C. C. Rep. 195, (1218). Christopher, Ill. to Ainsworth and Valentine, Nebr. Sunderland Bros. Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 512, (1300).
- Splint Coal.** Various points to Fort Dodge, Ia. Same points to Des Moines, Ia. and Albert Lea, Minn. Fort Dodge Commercial Club etc. v. Illinois C. R. Co. et al. 16 I. C. C. Rep. 572, (1022).
- Springs.** Transcontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Stack Chimney Brick.** North Birmingham, Ala. to Washington, D. C. Alphons-Custodis Chimney Construction Co. v. Southern R. Co. et al. 16 I. C. C. Rep. 584, (1023). Brazil, Ind. to Minnesota Transfer, Minn. Alphons Custodis Chimney Construction Co. v. Vandalia R. Co. et al. 16 I. C. C. Rep. 600, (1026).
- Staples, Wire.** El Paso, Tex. to Las Cruces, N. Mex. Bascom Co. v. Atchison, T. & S. F. R. Co. 17 I. C. C. Rep. 354, (1110).
- Staples and Staves, Iron.** St. Louis, Mo. to Denver, Col. Zang Brewing Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 337, (1259).

- Staves, Barrel.** Malden, Mo. and points in Arkansas to Alexandria, Mo. Bott Bros. Mfg. Co. v. Chicago, B. & Q. R. Co. et al. 19 I. C. C. Rep. 136, (1363).
- Steam Coal.** Appalachian Coal Fields in Va. to Bristol, Tenn. The Board of Mayor and Aldermen of the City of Bristol, Tenn. v. Virginia & S. W. R. Co. et al. 15 I. C. C. Rep. 453, (828).
- Steam Kidders.** Onalaska, Ark. to Batchellor, La. Northern Lumber Mfg. Co. v. Texas & P. R. Co. et al. 19 I. C. C. Rep. 54, (1345).
- Steam Shovel.** Parts of. Coffeyville, Kan. to Toledo, O. Vulcan Steam Shovel Co. v. Missouri P. R. Co. et al. 18 I. C. C. Rep. 265, (1243).
- Steel, Band, Bar, Boiler and Rod.** Terre Haute, Ind. to Louisville, Ky. and Cincinnati and Dayton, O. Highland Iron & Steel Co. v. Vandalia R. Co. et al. 18 I. C. C. Rep. 601, (1329).
- Bar.** Johnstown, Pa. to Winona, Minn. Winona Carriage Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 334, (1258).
- Hoop.** West Pittsburgh, Pa. to Cleveland, O. Hollingshead & Blei Co. v. Pittsburgh & L. E. R. Co. et al. 18 I. C. C. Rep. 193, (1217).
- Structural.** Chicago, Ill. to Houston, Tex. Houston Structural Steel Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 208, (1223).
- General.** Chicago territory, Indiana territory, Arkansas common points. Indiana Steel & Wire Co. et al. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 155, (908).
- Buffalo, N. Y. to Watertown, Wis. Scully Steel & Iron Co. v. Lake Shore & M. S. R. Co. et al. 16 I. C. C. Rep. 358, (954).
- Steel Bath Tubs.** Transcontinental shipments from east to west. Montague & Co. v. Atehison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Steel Plates.** Breckenridge, Pa. to Houston, Tex. Hagar Iron Co. v. Pennsylvania R. Co. et al. 18 I. C. C. Rep. 529, (1305).
- Steel Rails.** Onalaska, Ark. to Batchellor, La. Northern Lumber Mfg. Co. v. Texas & P. R. Co. et al. 19 I. C. C. Rep. 54, (1345).
- Steel Tanks.** Goshen, Ind. to Sullivan, Wis. Lindsay Bros. v. Lake Shore & M. S. R. Co. et al. 15 I. C. C. Rep. 284, (802).
- Stock Cattle.** South Omaha, Neb. to Cushman, Mont. Snyder-Malone-Donahue Co. v. Chicago, B. & Q. R. Co. et al. 18 I. C. C. Rep. 498, (1295).
- Stone, Crushed.** Cedar Bluff, Ky. to Baton Rouge, La. Southern Bitulithic Co. v. Illinois C. R. Co. et al. 17 I. C. C. Rep. 300, (1096).
- General.** East Branch, N. Y. to Weehawken, N. J. Newark Shippers' & Receivers' Bureau v. New York, O. & W. R. Co. 15 I. C. C. Rep. 264, (796).
- Stoves, Gasoline.** Lorain, Ohio and Detroit, Mich. to Oconomowoc, Wis. Lorleburg Co. v. New York C. & St. L. R. Co. et al. 18 I. C. C. Rep. 183, (1213).
- General.** Minneapolis, Minn. via Chicago to Fremont, O. Hartman Furniture & Carpet Co. v. Wisconsin Central R. Co. et al. 15 I. C. C. Rep. 530, (842).
- Strawberries.** Points in southwestern Missouri and northwestern Arkansas. Ozark Fruit Growers' Association v. St. Louis & S. F. R. Co. et al. 16 I. C. C. Rep. 106, (895).
- Pomona and Humboldt, Tenn. to St. Louis, Mo. Block & Co. v. Louisville & N. R. Co. 18 I. C. C. Rep. 372, (1267).

- Structural Steel.** Chicago, Ill. to Houston, Tex. Houston Structural Steel Co. v. Wabash R. Co. et al. 18 I. C. C. Rep. 208, (1223).
- Stucco.** Gypsum, Ia. to Lemmon, S. Dak. Quammen & Austad Lumber Co. v. Chicago G. W. R. Co. et al. 18 I. C. C. Rep. 599, (1328).
- Sugar, Beet.** Las Animas, Col. to Romero, Tex. American Beet Sugar Co. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 288, (930).
- Raw.* New York City to Reidsville, N. C. via water and rail. Penn Tobacco Co. v. Old Dominion S. S. Co. et al. 18 I. C. C. Rep. 197, (1219).
- General.* New York to Detroit, Mich. New York Central & H. R. Co. v. United States (No. 1), 212 U. S. 481, (429-B); same, (No. 2), 212 U. S. 500, (429-C).
- St. Louis, Ohio River crossings, Indianapolis, New Orleans, and Atlantic Sea Board points. Indianapolis Freight Bureau v. Pennsylvania R. Co. et al. 15 I. C. C. Rep. 567, (850).
- Eaton, Col. to Decatur, Ill. Herbert E. Havemeyer and Norris H. Mundy, Co-partners Trading under the Firm Name of W. A. Havemeyer & Co. v. Union Pacific R. Co. et al. 17 I. C. C. Rep. 13, (1034).
- Yonkers, N. Y. to points on defendant lines. New York Harbor. Federal Sugar Refining Co. of Yonkers v. Baltimore & O. R. Co. et al. 17 I. C. C. Rep. 40, (1039).
- New Orleans, La. to Columbia, Tenn.—Nashville, Tenn.—Decatur, Ala. Columbia Grocery Co. v. Louisville & N. R. Co. 18 I. C. C. Rep. 502, (1297).
- New Delhi, Cal. to Missouri River points via the line of Pacific Electric Ry. Co. and transeontinental carriers through Los Angeles, Southern California Sugar Co. v. San Pedro, L. A. & S. L. R. Co. et al. 19 I. C. C. Rep. 6, (1335).
- Sugar-Beet Pulp.** Janesville, Wis. to Cattaraugus, N. Y. and Winber, Pa. Larrowe Milling Co. v. Chicago & N. W. R. Co. et al. 17 I. C. C. Rep. 443, (1130-A); same, 17 I. C. C. Rep. 548, (1130-B).
- Sulphite of Iron.** Pulaski, Va. to Edgewater, N. J. General Chemical Co. v. Norfolk & W. R. Co. et al. 15 I. C. C. Rep. 349, (812).
- Sulphuric Acid.** Howe, Ill. to Aetna, Ind. Mineral Point Zinc Co. v. Wabash R. Co. et al. 16 I. C. C. Rep. 440, (983).
- Buffalo, N. Y. to Tulsa, Okla. Contact Process Co. v. New York C. & St. L. R. Co. et al. 17 I. C. C. Rep. 184, (1069).
- Syrup.** St. Joseph, Mo. to Pullman, Wash. National Mfg. Co. v. Chicago G. W. R. Co. et al. 18 I. C. C. Rep. 370, (1266).

T.

- Tables.** Transeontinental shipments from east to west. Montague & Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 72, (1043).
- Tan Bark.** Trenary, Mich. to Milwaukee, Wis. Trostel & Sons v. Minneapolis, St. P. & S. Ste. M. R. Co. et al. 16 I. C. C. Rep. 348, (949).
- Tanks, Steel.** Goshen, Ind. to Sullivan, Wis. Lindsay Bros. v. Lake Shore & M. S. R. Co. et al. 15 I. C. C. Rep. 284, (802).
- Tanner's Second-Hand Outfit.** Milwaukee, Wis. to Tacoma, Wash.

- Carstens Packing Co. v. Chicago, M. & St. P. R. Co. et al.** 16 I. C. C. Rep. 469, (992).
- Tee Rails.** Chicago, Ill. to Portland, Ore. Otis Elevator Co. v. Chicago G. W. R. Co. et al. 16 I. C. C. Rep. 502, (1003).
- Telegraph Poles.** Beaudette and Warroad, Minn. to points in North and South Dakota. Partridge Lumber Co. v. Great Northern R. Co. et al. 17 I. C. C. Rep. 276, (1087).
- Telephone Poles.** Beaudette and Warroad, Minn. to points in North and South Dakota. Partridge Lumber Co. v. Great Northern R. Co. et al. 17 I. C. C. Rep. 276, (1087).
- Threshing Machines.** Hopkins, Minn. Minneapolis Threshing Machine Co. v. Chicago, St. P., M. & O. R. Co. et al. 17 I. C. C. Rep. 189, (1071).
- Ties, Chestnut.** Vanceburg, Ky. to Baltimore, Md. Preston v. Chesapeake & O. R. Co. 16 I. C. C. Rep. 565, (1017).
- Cross.** Sault Ste. Marie, Mich. to Thiensville, Wis. MacGillis & Gibbs Co. v. Chicago, M. & St. P. R. Co. et al. 15 I. C. C. Rep. 329, (809).
- Arkansas and Louisiana points to Linwood, Kas. American Tie & Timber Co. Ltd. v. Kansas City S. R. Co. et al. 175 Fed. 28, (1102).
- Oak.** Texas points to Douglas, Ariz. Continental Lumber & Tie Co. et al. v. Texas & P. R. Co. et al. 18 I. C. C. Rep. 129, (1197).
- General.** Fenter, Ark. to Woodruff, Mo. Beekman Lumber Co. v. Chicago, R. I. & P. R. Co. et al. 16 I. C. C. Rep. 528, (1009).
- Southport, La. and Carbondale, Ill. American Creosote Works, Ltd. v. Illinois C. R. Co. et al. 18 I. C. C. Rep. 212, (1225).
- Louisa, Ky. to Huntington, W. Va. Chesapeake & O. R. Co. v. Standard Lumber Co. 174 Fed. 107, (1061).
- Timbers, Mining.** San Pedro wharf, Cal. to Charleston, Ariz. Blinn Lumber Co. v. Southern Pacific Co. et al. 18 I. C. C. Rep. 430, (1287).
- Tobacco, Leaf.** Kentucky and Tennessee points to Monterey, Mex. via Laredo. Black Horse Tobacco Co. v. Illinois Central R. Co. et al. 17 I. C. C. Rep. 588, (1161).
- Tomatoes, Canned.** Ridley, Md. to Duluth, Minn. Stone-Ordean-Wells Co. v. Philadelphia, B. & W. R. Co. et al. 18 I. C. C. Rep. 160, (1205).
- Traps, Mole.** Niles, Mich. to Chicago, Ill. Reddick v. Michigan C. R. Co. 16 I. C. C. Rep. 492, (999).
- Trimnings, Furniture.** Grand Haven, Mich., Waterbury, Conn. and Rome, N. Y. to San Francisco, Cal. Merle Co. v. Atchison, T. & S. F. R. Co. et al. 17 I. C. C. Rep. 471, (1136).
- Tubing, Brass-Covered Iron.** New York City and Neighboring points to San Francisco, Cal. Merle Co. v. New York Central & H. R. R. Co. et al. 17 I. C. C. Rep. 475, (1137).
- Typewriters.** Maxwell v. Adams Express Co. 15 I. C. C. Rep. 609, (861).

U.

- Uncompressed Cotton.** Vincent, Ark. to Memphis, Tenn. Barton, etc. Co. v. St. Louis, I. M. & S. R. Co. 15 I. C. C. Rep. 222, (784).

V.

- Vegetables, *Asparagus*.** Charleston, S. C. to northern points. *Asparagus Growers' Assn. of Charleston County, S. C. v. Atlantic C. L. R. Co. et al.* 17 I. C. C. Rep. 423, (1129).
- Cabbage*.** St. Andrews, S. C. to New York. *Voorhees v. Atlantic C. L. R. Co. et al.* 16 I. C. C. Rep. 42, (883).
- Points in States of Mississippi and Louisiana to Chicago, Ill. *Davies v. Illinois C. R. Co.* 16 I. C. C. Rep. 376, (961).
- Lewiston, N. Y. to Houston, Tex. *Millar v. New York C. & H. R. R. Co. et al.* 19 I. C. C. Rep. 78, (1352).
- Lima Beans*.** California points to Omaha, Neb. Commercial Club of Omaha v. Southern P. Co. et al. 18 I. C. C. Rep. 53, (1175).
- Onions*.** Reno, Nev. to Alturas, Cal. *Lauer & Son v. Nevada-California-Oregon R.* 17 I. C. C. Rep. 488, (1139).
- Potatoes*.** Pound, Wausaukee and Beaver, Wis. to Painesdale, Mich. *Thomas v. Chicago, M. & St. P. R. Co. et al.* 16 I. C. C. Rep. 364, (956).
- Reno, Nev. to Alturas, Cal. *Lauer & Son v. Nevada-California-Oregon R.* 17 I. C. C. Rep. 488, (1139).
- East Virginia points to Hinton, W. Va. *Hinton Fruit & Produce Co. v. Chesapeake & O. R. Co. et al.* 17 I. C. C. Rep. 578, (1157).
- Tomatoes, Canned*.** Ridley, Md. to Duluth, Minn. *Stone-Ordean-Wells Co. v. Philadelphia, B. & W. R. Co. et al.* 18 I. C. C. Rep. 160, (1205).
- General.** Points in Florida to destinations north of the Potomac and Ohio Rivers and east of the Missouri. *Florida Fruit & Vegetable Shippers' Protective Assn. v. Atlantic C. L. R. Co. et al.* 17 I. C. C. Rep. 552, (710-B).
- Green Bay, Wis. to Pattonsburg, Mo. *Thomas v. Chicago, M. & St. P. R. Co. et al.* 15 I. C. C. Rep. 584, (851).
- Gamble-Robinson Commission Co. v. Chicago N. W. R. Co.* 168 Fed. 161, (852).
- Gibson and Humboldt, Tenn. to Chicago, Ill. *Davies v. Louisville & N. R. Co. et al.* 18 I. C. C. Rep. 540, (1309).
- St. Rose, La. *Davies v. Illinois Central R. Co.* 19 I. C. C. Rep. 3, (1334).
- St. Paul and Minneapolis. *Wholesale Fruit & Produce Assn. et al. v. Atchison, T. & S. F. R. Co. et al.* 17 I. C. C. Rep. 596, (705-B).
- Vehicles.** Lawrenceburg, Ind. to Milwaukee, Wis. *Lindsay Bros. v. Baltimore & O. S. W. R. Co. et al.* 16 I. C. C. Rep. 6, (871).
- Vehicle Wheels.** Racine, Wis. to Prescott, Ariz. *Racine-Sattley Co. v. Chicago, M. & St. P. R. Co. et al.* 18 I. C. C. Rep. 142, (1200).
- Veneer, Walnut.** Kansas to Chicago and Chicago points. *Penrod Walnut and Veneer Co. v. Chicago, B. & Q. R. Co. et al.* 15 I. C. C. Rep. 326, (808).

W.

- Wagon Axles, Iron.** Wilkes-Barre, Pa. to Carthage, N. C. *Tyson & Jones Buggy Co. v. Aberdeen & Asheboro R. Co. et al.* 17 I. C. C. Rep. 330, (1107).
- Wagons, Farm.** Racine, Wis. to Abilene, Tex. *Racine-Sattley Co.*

Wagons, Farm (Continued)

v. Chicago, M. & St. P. R. Co. et al. 16 I. C. C. Rep. 488, (997).
 Louisville, Ky. to Sacramento, Cal. and from Toledo, O. to Portland and Eugene, Ore. and Seattle, Wash. Kentucky Wagon Mfg. Co. et al. v. Illinois Central R. Co. et al. 18 I. C. C. Rep. 360, (1264).

General. Toledo, O. to Watertown and Cedarburg, Wis., Tonopah, Nev. and Savannah, Ga. Milburn Wagon Co. v. Lake Shore & M. S. R. Co. et al. 18 I. C. C. Rep. 144, (1201).

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